

LAW AND ORDER IN INDUSTRY

FIVE YEARS' EXPERIENCE

BY
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TO MAX M. SCHWARCZ,
OF THE SMALL BAND WHO BLAZED
A TRAIL THROUGH THE THICK FOREST,
THE FIRST TO ENTER THE LAND
OF MYSTERY.
PROUD, BRAVE, LOYAL, A DEAR AND
A GOOD FRIEND TO ALL WHO
LABORED TRULY.

TO THE READER

MAGAZINE writers have written sketches and Government investigators have compiled statistics about the New York experiences with the "Protocol"—a curious animal newly arrived in the industrial menagerie. (He is but five years old.) No one has tried to take his picture in motion.

The photographer here is a lawyer. Some people think that disqualifies him from being a photographer, or for that matter, from being anything human. Worse still, he is a lawyer for "capitalists," *i. e.*, men who employ labor, and who, it is assumed, generally do no labor themselves—like the lawyer. In common with his kind, the lawyer likes to study the antics of animals. This one is alive, very much alive. Perhaps the picture is not focused as you would like it. You may like it at a different angle. Then run the reels over again and be your own censor. In other words, here are the facts: draw your own inferences if the inferences in the book are not—to your mind—sound.

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INTRODUCTION

THE business of making clothes for women brings up for the average male a picture of a highly expensive dressmaker's establishment (to which his wife or daughter repairs but too often for his pecuniary comfort), a tenement house sewing machine with a sick, overworked mother and a string of helpless children scampering about, or a "sweatshop" that the Board of Health ought to suppress—and why doesn't it?—or possibly a Montague Glass play. But to those who know, it is an industry that employs in New York alone over one hundred thousand people, has a capital investment of \$100,000,000, and in the industries of the country ranks eleventh in number of workers employed and fifteenth in value of products manufactured. In New York City alone over half of all the clothing worn by the men and women in the United States is made. It is estimated that seventy per cent of the women's clothing manufactured in the United States is made in New York City. According to the census for 1909, the annual output of women's clothing was \$266,477,000. It is an industry where the dividing line between capitalist and laborer is not easy to locate. With a few hundred dollars a

worker can buy a machine, rent a small loft, secure cloth on credit, and, if he has executive ability and works hard, become a "boss." As is generally known, it is one of those industries, both on the employers' and on the workers' side, classified as "the Hebrew trades," the percentage of Italian workers being very small.

The Protocol of Peace in the cloak and suit industry was signed on September 2, 1910, and is to be found as Appendix A. It was signed after a very bitter strike that involved nearly sixty thousand people. It has preserved general peace in the industry since 1910, in spite of the fact that during that time serious crises have arisen in the industry. It came about through the intervention, first, of Louis D. Brandeis, and later of Louis Marshall, with the aid of Meyer London, the lawyer for the Union, and myself, as counsel for the employers. By this document there was created a Board of Arbitration, consisting of the appointee of both sides and a third person chosen by both, a Board of Sanitary Control made up of representatives of the employers, workers, and the public, and a Board of Grievances, made up of representatives of both sides. The agreement in essence is, in its nature, a fundamental constitution for the doing of business between the workers and the employers, with a supreme judicial tribunal, a conciliation and mediation department, a department for the establishment of legislation by consent of both

parties, and an administration department. The Board of Arbitration—the supreme judicial tribunal—was originally made up of Louis D. Brandeis as chairman, Hamilton Holt, and Morris Hillquit. In 1912 Mr. Hillquit resigned and his place was taken by Dr. Walter E. Weyl. In 1914 Dr. Weyl resigned and his place was taken by Mr. William O. Thompson (counsel for the United States Commission on Industrial Relations), the other two members of the Board continuing until the termination of the Protocol in May, 1915. The Joint Board of Sanitary Control is made up of Dr. William J. Schieffelin, chairman, Miss Lillian D. Wald, and Dr. Henry Moskowitz, as representatives of the public, with two representatives of the employers and two representatives of the unions. The Director of the Board, under whose supervision the work is conducted, is Dr. George M. Price, author of "The Modern Factory."

Through the institutions created by the Protocol, the industry was lifted to a higher plane of sanitary and health protection regulation, with marked material advances to the workers. Although the Protocol was terminated in May, 1915, a few months later, through the conciliatory efforts of the Mayor's Council of Conciliation, consisting of Dr. Felix Adler, the leader of the Society for Ethical Culture, Walter C. Noyes, former judge of the United States Circuit Court of Appeals,

George W. Kirchwey, a former Dean of the Columbia Law School, Henry Bruere, the City Chamberlain, Louis D. Brandeis, the former head of the Board of Arbitration, and Charles L. Bernheimer, the chairman of the Committee on Arbitration of the Chamber of Commerce, the Protocol was revived for two more years.

It was copied in the dress and waist industry in New York, the clothing and cloakmaking industries in Chicago, the cloak and dress and waist industries in Boston and in Philadelphia. In New York City it was followed also in three other branches of the needle-working industry—the misses' and children's wear, wrappers and kimonos, and muslin underwear.

Through Protocol institutions for five and a half years the cloak industry in New York has been an experiment station for new methods of dealing with the relations between employer and worker. In consequence, it has been the subject of scientific research, governmental investigation,* sanitary regulation,† magazine composition,‡ and editorial comment, and every fresh immigrant who expects to earn a living with the aid of a needle learns soon after his arrival that the word

* See Bulletins, Bureau of Labor Statistics, Department of Labor, Nos. 98, 144, 145, 146, 147.

† See Reports, Joint Board of Sanitary Control. See *Sanitary Control of an Industry by Itself* by L. D. Wald, Report of International Congress of Hygiene and Demography, 1913.

‡ *Munsey*, July, 1913; *Survey*, February 1, 1913.

“Protocol” spells something new and mystical in the industrial world. What is it? How came it about? What lessons can be garnered from its experience? These are the questions to which some answer, more or less incomplete, may be found in the pages to follow.

There has been much dissatisfaction with the work of the Federal Industrial Relations Commission. But in the testimony and reports (including those of the special investigators) will be found material which it is safe to predict will be drawn upon for many years to come by students and legislators. Though here in the effete east, we dispose of the entire work of the Commission when we satisfy ourselves that the chairman’s judicial poise and temperament have disappeared—though he himself is authority for the statement that he never possessed any—yet congressmen will find plenty of material upon which to erect statutory proposals and fill volumes of Congressional Records with debate.

One contribution the Commission has already made. After careful study, the Commission is unanimous in finding that the best hope for future industrial peace lies in the direction of trades unions working with employers’ associations in joint agreements—collective bargaining, so called. Through this method all agree we shall arrive at a better industrial day, meet the real causes of industrial unrest, check abuse of power by employer and worker and bring order out of chaos.

The Commission's report contains the following:

We believe that collective bargaining and joint agreements are preferable to individual bargaining, and we believe that the general public should support the unions in their efforts to secure collective agreements. But this can only be done through the influence of public opinion without the force of law. It is based on the conclusion that two opposing organizations, equally strong, are able to drive out abuses practiced by the other.*

The employers on the Commission (Ballard, Weinstock and Aishton) say that as representatives of employers they agree with the members of the Commission who represent the general public and also with those representing organized labor "in believing that under modern industrial conditions, collective bargaining, when fairly and properly conducted, is conducive to the best good of the employer, the worker, and society."†

But the work of the Commission is thoroughly disappointing to those who have passed the elementary grades of education in the problem of industrial disputes. Nowhere is the material so collated or put together that the American people (meaning thereby the American employer, the American worker, and the American consumer) can form an intelligent judgment.

The Commission itself says that though public opinion

* Report of Federal Commission on Industrial Relations (1915), p. 375.

† *Id.*, p. 414.

practically decides who shall win, where both sides are fairly well balanced in strength "such public opinion, however, to be of value, must be *enlightened*. Under prevailing conditions this is almost impossible. All that the public is now able to get, as a rule, are garbled and *ex parte* statements, more or less misleading and unreliable, which simply tend to confuse the public mind." * The crying need for definite information on the actual workings of collective bargaining, its strength, its weaknesses, is not met by any of the reports of the Commission. It has failed to meet the expectations of those who hoped to get a reliable, unbiased survey, such as one finds in the report of the Industrial Council of Great Britain.†

The majority report (Manly-Walsh-Lennon-O'Connell-Garretson) says:

The fundamental question for the Nation to decide, for in the end public opinion will control here as elsewhere, is whether the workers shall have an effective means of adjusting their grievances, improving their condition, and securing their liberty, through negotiation with their employers, or whether they shall be driven by necessity and oppression to the extreme of revolt.‡

* Report of Federal Commission on Industrial Relations (1915), pp. 409, 410.

† Reprinted as Bulletin No. 133, U. S. Department of Labor.

‡ Report of Federal Commission on Industrial Relations (1915), p. 89.

But suppose you have the fullest acceptance of the principle and theory of collective bargaining? Suppose you have the two trade organizations, employers' association and union, working together, suppose there is the fullest opportunity to adjust grievances, inhibition against strikes and lockouts, the fullest and frankest "recognition of the union." What then? Does it work? If it does, how? If it does not, why? What are the failures as well as the successes? What happens if for the time being either organization is stronger than the other? Are there abuses of power? Where? Where does the public benefit? Where is it hurt? What should the public do about it? These questions the Commission has failed to answer. If experience is the best, if not the only lamp to guide one's feet, perhaps an intensive study of five years' actual experience in one industry may answer these questions.

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CHAPTER I

ANARCHY

IN 1907 I received my introduction to the cloak and suit industry of New York. At that time, during the lunch hour Fifth Avenue presented a remarkable sight. Where once ladies and gentlemen of fashion promenaded, workingmen and women, showing unmistakable evidence of newness to the ways of the country, crowded the pavements and the center of the highway. An eagerness for a breath of fresh air and a sight of the shop windows brought about a condition ruinous to the department stores which had long prospered upon that avenue. Already realty owners along the street had hung out signals of distress. The change in Fifth Avenue below Twenty-third Street, now so pathetically disclosed in vacant buildings and "To Let" signs, was then in process.

In the hope of alleviating what seemed to be an inexcusable and remediable condition of affairs, an association of Fifth Avenue business men prevailed upon some of the factory employers to endeavor to change the lunch hour of the working people. One of the leading

cloak manufacturers on Fifth Avenue succumbed and issued an order to the workers that the hour for luncheon would thereafter begin earlier than usual. The Czar in Russia never did worse! Without consulting them, in a free country, the employer had actually interfered with the inalienable right of the toilers to eat between twelve and one o'clock and to go upon Fifth Avenue whenever the ten minutes they used for food had expired!

The strike that followed this effort to redeem Fifth Avenue necessitated the services of a lawyer for the employer. It was my introduction to the Industrial Workers of the World and anarchy in industry. One of the circulars then distributed by the workers was headed in big red letters: "War! War! War!" After weeks of effort in the police courts and with the District Attorney, we were obliged to present the matter to the Supreme Court of the county. An able and fair judge wrote, upon the basis of the evidence we presented to him, the following:

It is evident that instead of a manly, self-respecting demand to right a grievance, whether real or believed to be such, fortified by reason and argument, methods have been employed by the defendants that are un-American, intolerable, abhorrent to all ideas of personal liberty and in defiance of the right of the individual to determine for himself under what conditions he prefers to labor. Every individual is free to exercise any lawful calling

without being subjected to acts of terrorism by those who are not in accord with his conception of the manner in which he is pursuing his vocation.*

So far as public sympathy was concerned, it went to the side of the strikers. The magistrates before whom the assault cases were brought rarely punished, and if they punished, fined lightly. The District Attorney's office did its best,—which was very little. The Police Department responded, but infrequently. And when the strike was all over, the employer had scored “a great victory.” He had beaten the working people into submission. It had cost him a pretty penny, but he had won. He paid his lawyer's bill with a little feeling that it was a charge against loss rather than a credit to profit, but, nevertheless, he had won. We both learned that a single employer fighting a mass of work-people, with public opinion against him from the very outset, is at a great disadvantage; and, more important still, we learned that the machinery of the law is wholly inadequate to meet such situations.

I advised the formation of an association of employers. I was told that it was impossible. Why? The cloak manufacturers could never agree upon anything, and if they did, they would not live up to their agreements. I had rarely seen so much distrust, outside of politics.

* *A. Beller & Co. v. Garment Workers' Union, Local No. 61, Industrial Workers of the World et al.*, *New York Law Journal*, March 27, 1907.

Apparently not even an enlightened self-interest could induce competitors to sit down with each other and agree upon a plan for coöperation in business. The advice went for naught. Anarchy on the workers' side was matched by anarchy on the employers' side. The difference was one of kind and degree. In the case of the employers it was anarchy in the sense of lawlessness in their competition with each other and in their unwillingness to abide by the rules of their own making. But at least the workers knew one thing that the employers did not. The Yiddish and Italian press had put it before them daily in big red headlines, and it had been dinned into their ears night and day by enthusiastic leaders. It was the simple lesson of organized collective dealing with industrial problems. In 1907, 1908, and 1909 a union of cloak *manufacturers* was something to poke fun at. Around the Hoffman House tables the lunch-hour statesmen smoked their cigars and gave their final and conclusive verdict. "A beautiful dream. Who but a lawyer would think it practicable?"

But there were many ferments in the pot. In her story of the Henry Street Settlement Miss Lillian Wald* has given us the inner history of the beginnings of the East Side socialistic and trades union movement in the garment industry. The trade union does not owe its

* "The House on Henry Street."

origin to the decent employer, considerate of the well-being of the workers in his shop. The real propagandist for trade unionism is the employer who is not yet past the kindergarten stage of shop morality. He furnishes the material for such stories as "Comrade Yetta." He literally makes the existence of a trade union possible, for without him there would be no union. His grasping, his tyranny, his indifference to the ordinary human rights of working men and women make the basis of factory laws, industrial commissions, and clear the field for I. W. W. radicals. These men at least earn our gratitude in one respect; they breed their own cure. W. J. Davis, President of the Trade Union Congress in Great Britain held in 1914, said:

Trade unionism took its rise more from the employer than the labor leader. It came from the unjust employers, who, not satisfied with unfair conditions, placed indignity after indignity on the worker until one of their number had the pluck to rebel, and who, by the timid murmurings of the oppressed, was secretly proclaimed a leader. By common consent of the employers, and as they or their friends made and administered the laws, he was persecuted. The persecution, however, instead of annihilating the leader, produced leaders.

In the manufacture of women's garments in New York City were men of fine culture, fine sensibility, broad and liberal training, who had come to the top through their sheer innate intellectual and artistic ability.

These men scorned to treat their working people unhumanely. Many are the stories that could be told of their interest in the personal lives of men and women in their employ. But, unfortunately, in their trade as in our profession, there are men of different standards working side by side, and there was no way of separating the sheep from the goats. That there were grievances on the part of the workers in the industry was beyond question. That they had tried to redress these grievances and had failed was equally beyond question. It was an industry of intermittent strikes. The cure for anything wrong was the strike. It was the workingman's panacea for all his ills. During the busy season the workers had the boss by the throat. During the slack season he reciprocated and turned the tables on them. The merry game went on, each side lying in wait for the other. Employers freely signed contracts with the union, guaranteeing fine wages and good conditions. The ink was scarcely dry before they became mere scraps of paper. The new standards were secured at great sacrifice. During a strike the working people were enthusiastic union members, literally ready to die for their union. As soon as the paper was signed and peace was declared, they lost interest, failed to pay dues to their union, failed to attend meetings, and the union lapsed into decay, to be revived only through another strike.

A few of the leaders had grasped the philosophy of collective dealing and had some background of knowledge of trades unionism generally, but so far as the masses of the workers were concerned progress was made by explosion—not carefully controlled, as in a motor engine, but as highstrung, emotional men are impelled,—forward, then back, then sidewise, with much waste of fuel and oil and very little mileage. Gradually the leaders learned through bitter experience the lesson men learn only through bitter experience—that power, however great, applied without moral intelligence, is worse than useless because it is dangerous. An automobile with no steering gear or brake will speedily bring destruction to passengers and driver. With steering gear and brake, but under control of a headless chauffeur, it is still a dangerous animal. Little by little the influence of reason made itself felt in the union. There was less action and more thought. There was planning, looking ahead.

One hot day, at the beginning of July, 1910, I was walking up Fifth Avenue when a friend handed me a circular printed in Yiddish. "You will be called into action very soon," he said. It was the circular distributed that very day, calling upon all of the workers in the trade to turn out in a general strike. Within a day or two I was summoned to attend a conference of leading manufacturers, who had decided to form a protective

employers' association. The time was now ripe for an organization of employers. The experience of my one client in 1907 had been matched by others. It is true the lunch-hour statesmen looked dubious and freely prophesied failure. But a condition confronted the employers *en masse*. A union, a strong union, had been born. To meet such a union a strong employers' organization was necessary. The value of an organization of employers was now clearly apprehended. But organization for what purpose? Organization to be pitted against organization, union against association, association against union. The dominant thought in the mind of the Union was to wrest power from the employer. The first thought in the minds of the employers was to restrain aggression. So far as could be observed, only a handful believed in the practicability of organizing the industry itself, regulating the power of both organizations and making possible coöperation between them.

The fight was bitter, intensified by the stakes at issue and by the feeling on both sides that each was fighting for its very life. Again the machinery of the law broke down. There were assaults. There was riot. Again there was a resort to the courts. Another judge, passing upon the facts, ruled that the violence must cease:

In aid of their purpose, defendants have employed illegal means. From the inception of the strike until the present day, members of the unions who were formerly

employees of members of plaintiff's association have interfered with the business of the manufacturers by forcible entry of the shops and destruction of property therein, assaults and batteries of a serious nature upon employees who refused to stop work, threats to employees who were not unionists to beat or kill them, similar threats to wives and members of the families of such employees, use of opprobrious epithets and picketing the streets with unruly throngs. At large expense, the manufacturers have been obliged to hire guards to conduct their employees to and from their homes or to provide sleeping accommodations for them in their shops. These facts are fully attested by over fifty affidavits of employees and manufacturers who have been threatened or whose places of business have been forcibly entered and by the record of testimony in police courts. . . .*

The story is not a story limited to the cloak industry, nor to New York City. The Mayor of Cleveland writes:

As each strike occurs, an opportunist policy is adopted by the police authorities. Things are tided along without any clear aim or method and without any tribunal that can determine the right and wrong of questions involved, until somebody is killed or a serious riot threatens the destruction of property. Then public opinion momentarily clarifies; we all agree that we do not want such things, no matter what happens, and the police now have a steadied sentiment to support them; the trouble is over. Until this healing incident has arisen out of the

* *Schwarcz v. International Ladies' Garment Workers' Union*, 68 Misc. (N. Y.) 528; (535, 536, 537).

troubled waters, about all the police can do is to repress the more serious disturbances. In the surging violence of sentiment which surrounds a strike when the men begin to get desperate, the police are fortunate if they can prevent assaults and the destruction of property; they are powerless to allay the fierce outbursts of emotion which stir the participants and lead them to lawlessness.*

The president of the Employers' Association of Massachusetts, writing on "Conditions Fundamental to Industrial Peace," says:

. . . government under our present system cannot be relied upon as a compelling force to insure justice and protect the individual and the law-abiding community when corporate capital and organized labor are at war.†

A close friend of trades unions writes that "A plea of trades unions for immunity, be it from injunction or from liability for damages, is as fallacious as the plea of the lynchers."‡ And Ex-President Taft is of opinion that trades unions have failed to "condemn in any way, as they ought, the use of criminal methods to which in a lawless spirit their representatives at various times

* Newton D. Baker: Law, Police, and Social Problems, *Atlantic Monthly*, July 1915, p. 17.

† George B. Hugo: Conditions Fundamental to Industrial Peace, *The Annals of the American Academy of Political and Social Science*, Nov., 1912, p. 22.

‡ Louis D. Brandeis: Arbitration, *The Mediator*, Aug. 20, 1915, p. 11.

have seen fit to resort.”* The employers on the Federal Industrial Relations Commission were satisfied from the testimony before them that one of the main reasons for the opposition of employers to unionism is “the resort on the part of unionists to violence in labor troubles, and to the fact that unionists condone such violence when committed in the alleged interest of labor.”† The representatives of labor on the Commission reply to this criticism by way of “confession and avoidance” (as we lawyers say): “The union, fighting for its right to live, is sometimes forced to tolerate acts that would not be countenanced if its entity were secure and its energies were not absorbed in fighting for existence.”‡ And the representatives of the public on the Commission say that the strikes accompanied by bloodshed, and attracting the attention of the country for the past quarter of a century “have been revolutions against industrial oppression, and not mere strikes for the improvements of working conditions.” And they list as such “revolutions” the railway strike of the late eighties, the Homestead strike, the bituminous coal strike of 1897, the anthracite strikes of 1900 and 1903, the McKees Rocks strike in 1909, the Bethlehem strike in 1910, the

* William Howard Taft in speech before the National Association of Manufacturers, May 26, 1915.

† Report of Federal Commission on Industrial Relations (1915), p. 428.

‡ *Id.*, p. 280.

strikes of the textile workers in Lawrence, Paterson and Little Falls, the strikes in the mining camps of Idaho, Colorado, West Virginia, Westmoreland Co., Pa., and Calumet, Mich., and also "the garment workers' strikes in New York and other cities." *

Apparently, the representatives of the public upon the Federal Industrial Relations Commission believe that by calling a strike a "revolution" violence and law-breaking are excused.

A recent writer finds in the lessons of the lynching of Leo Frank a striking analogy between that kind of law-breaking and the kind of law-breaking in the case of labor disputes. He finds in both an attitude towards the law symptomatic of "a besetting weakness of the American democracy," and that "back of the physical violence and lawlessness is an insidious and dangerous moral disorder." From eight years' observation and study, I am convinced that his conclusion is accurate: "The inability of American State governments in the case of labor disputes to protect either the strikers or the employers against organized disorder is notorious." † The Mayor of Cleveland has come very close to finding the real cause. He finds first of all that the state of the public mind during the violence is 'confused and hesi-

* Report of Federal Commission on Industrial Relations (1915), p. 89.

† Georgia and the Nation, *The New Republic*, Sept. 4, 1915, p. 113.

tant." The public sits by, "blaming one side or the other on such half information or interest as we may have, or wondering what ought to be done about it. . . . We do not like violence, but somehow this seems to us excusable violence, if it be not too violent." We have not yet come to realize that there is "a social loss with just so much human labor and wealth gone and so much less wealth produced," and that "labor loses not only the battles it ought to lose but many it ought to win." And he makes the further observation that "the result, no matter what it is, rests upon no higher sanction than force, and therefore lacks stability and will last only until one side or the other feels strong enough to renew the struggle." *

The Mayor of Cleveland wrote in 1915. What he said was said in 1910, ~~is~~ still said, and said over and over again. But where is the way out? Must there be violence always accompanying labor disputes? Is it "revolution?" We met these questions face to face in 1910 and met them over again in the years following.

* Newton D. Baker: Law, Police and Social Problems, *Atlantic Monthly*, July, 1915, p. 17.

CHAPTER II

THE CLOSED SHOP

THE general strike was called without notice to the employers and without presentation of the customary list of grievances. All that the employers knew was that an order to strike had been issued, military fashion, to all of the factory workers, and that subsequently each employer had received in the mails a form of contract which, in legal and moral effect, meant to him the surrender of the control of his factory to the union. This contract contained the following remarkable clause:

I. The said Firm hereby engages the Union to perform all the tailoring, operating, pressing, finishing, cutting and buttonhole making work required to be done by the Firm in its cloak and suit business, during the period commencing with the date of this agreement and terminating one year from date, and the Union agrees to perform said work in a good and workmanlike manner.

The *New York Times*, commenting upon this contract, said: "The proposed agreement of the Cloakmakers' Union is a reminder of the padrone system." * The great number of people involved in the strike—it was

* *New York Times*, July 16, 1910.

said sixty thousand went out for ten weeks—its suddenness, gave it a dramatic flavor entitling it to a place on the first page of the newspapers. In our newsgathering nothing becomes really important in the nature of a labor dispute until there is a lockout or a strike, and the situation becomes a real newspaper “story” only when some heads are smashed or a murder is committed.

But there was more involved in this particular strike than in many similar great strikes. Employer and worker in this industry were bound together by ties of race association and tradition not easily broken. There was real intelligence and sincerity on both sides and a fundamental basis of agreement, hidden, of course, by the noise and the turmoil upon the surface. What were the real differences? Very soon after the organization of the Employers’ Protective Association each member pledged himself:

That to the utmost of his ability, with the assistance of the Executive Committee, he will endeavor to adjust all shop grievances his employees may have.

I can testify from personal knowledge that the leaders of the Association were as earnest and genuine in their desire to eliminate the real grievances of the workers in the industry as were the leaders of the Union. They resented the indiscriminate abuse that had been heaped upon the entire industry. They felt keenly the injustice

of classing sheep with goats. And there was a very deep-seated determination that out of the strike should come something that would justify its cost. There was a definite and courageous determination to put the industry upon a higher plane and to make of the business at least something which would not make the employer shamefaced when admitting to his neighbors or to his children that he was a cloak manufacturer. In the private executive sessions of the employers' association I have heard the president say repeatedly that the association stood for justice to the workers as well as to its own members, and that the efforts of its officers would be fruitless unless the industry were raised to a higher plane as the result of this crisis.

If justice and a higher order of industry were the objective points for both workers' union and employers' association, why, then, a bitter conflict involving great loss and sacrifice? This was the rock-bottom question. A few men, disinterested and impartial, putting this question to both sides, learned that there was a basis for peace and order if both sides could be gotten together. In August, 1910, however, the situation was this: a single issue precluded conference between the parties. At that time the union leaders genuinely believed that no matter what agreement was arrived at between the employers and the union, unless the union controlled the supply of labor it would go to pieces and

the standards would break. Accordingly, the "*closed shop*," *i. e.*, a shop in which none but union men should be employed, was to them a matter of vital principle; and so thoroughly convinced were they on this score that they made every other issue subordinate. In their publicity campaign they had made much of the unsanitary conditions of the shops, the long hours, the low wages, the exacting of deposits, the tenement house labor, and the rest, but what they fought for more than anything else was "recognition of the union," which to them meant the "closed shop." To the employer, also, it was a matter of principle. He carried the responsibility for running his enterprise. He knew he could not run it without freedom to select his employees. To him the "closed shop" meant abdication. It spelt ruin.

The two parties were kept from each other by this apparently impassable barrier. In August, 1910, it seemed impossible to bring them nearer together. To Mr. Louis D. Brandeis is due entirely the credit of cutting this Gordian knot. Through the influence of friends of the union, he was called in to advise them. He advised them to waive the demand for the closed shop and to present in writing to the manufacturers their grievances and to ask for a conference (having first learned through diplomatic sources that once the barrier was removed such a conference was practicable). Mr.

Brandeis secured in the early hours of a midnight session with the executive officers of the Union authority to assure me, on behalf of the manufacturers, that the issue of the closed shop was eliminated. In his letter to me he wrote: "All of these officers understand fully that under this proposal the closed shop is not a subject which can be discussed at the conference." It was a great pleasure to join with Mr. London, the counsel for the Union, a few days later in inviting Mr. Brandeis to preside over the conference which followed. It lasted for five days. The grievances presented by the Union's representatives were briefly the following:

Low wages.

Unreasonable night work.

Work in tenement houses.

Disregarding of holidays and Sundays.

Sub-contracting.

Discrimination against union men.

Irregular payment of wages.

Extracting of security.

Charging for material and electricity.

Blacklisting of active union men.

At first both sides approached each other with a very marked feeling of distrust. Gradually a better attitude of reasonableness prevailed. Step by step the minds of the parties were brought together. The liberal attitude of the leaders on the manufacturers' side, which

was only known to those who were in their confidence, now came out into the open. Indeed, such criticism of their work as came in later days was based upon the score that in August, 1910, they had been too ready to agree.

On the fifth day of the conference, when practically all other matters had been disposed of, we were startled to hear the union representatives bring the closed shop up again for discussion. Mr. Brandeis very properly said:

I should rule that the subject of the closed shop could not be discussed at all, except with the absolute consent of everyone who has entered here into the conference, because it was expressly understood, and I gave my assurance upon my own understanding of the written document which I received, that that was a subject which could not be brought up, and we proceeded wholly on that.*

Notwithstanding all that had been accomplished up to this point, and despite the authorized assurance given to the manufacturers by Mr. Brandeis, the barrier again arose, huge and ominous, between the parties. It was here that in the effort to bring them together, Mr. Brandeis suggested what afterwards came to be known as the "Preferential Union Shop." I must confess that I did not agree with Mr. Brandeis as to its utility. Never-

* Minutes of Conference, July 20, 1910.

theless, I recommended to the officers of the association that Mr. Brandeis and I discuss fully and frankly before the Executive Board the feasibility of his recommendation. Mr. Brandeis argued one way. I argued another, as two lawyers will, each for his own conviction. Mr. Brandeis won my clients over. On the 1st of August, 1910, I was authorized to submit to Mr. London and to Mr. Brandeis the following letter:

Dear Mr. London—Our conference this morning is fraught with such grave consequences that I believe such matters as I have to submit should be reduced to writing.

I am prepared to join with you in recommending to our respective organizations the following as their joint understanding of the relations between the two, to be agreed upon:

The conference has developed that the grievances complained of by the Union can be adjusted. Practically every subject has been agreed upon, save that of wages and the year-round Saturday half-holiday (instead of during the four summer months), both of which matters the manufacturers are willing to leave to arbitration. A Joint Board of Sanitary Control, composed of representatives of the Association and the Union and the public, will be formed, whose business it will be to establish standards of sanitary conditions, to investigate as to the observance of these conditions, and both parties to the conference agree to exercise their powers to the fullest to enforce these standards.

The manufacturers realize that to establish a standard of sanitary conditions, and standards of wages and hours throughout the industry it is important that there

should be complete coöperation between their Association and the Union. They are, therefore, ready to strengthen the Union, if it be but well organized and wisely led. If a complete agreement be now reached upon these difficult and delicate matters it will at once establish confidence between the leaders of both sides.

The manufacturers cannot, of course, surrender the control and management of their factories to the Union. In agreeing to this declaration, the Union indicates that it assents. The manufacturers cannot coerce any one into joining the Union; to this the Union assents. The manufacturers cannot supervise the Union's business. The Union does not ask that they should. But the manufacturers can let it be known that they are in sympathy with the Union, and that as between a Union man and a non-union man of equal ability to do the job, they will employ the Union man. They cannot ask each man seeking a job to show his Union card, nor agree to collect the Union dues. On the other hand, they can and will (if this declaration be accepted) announce to all of their employees that they believe in the Union and that all who desire its benefits should share in its burdens.

In signing this declaration, the Union does not seek the "closed shop" as it is understood by the manufacturers. They seek the "union shop" by which they mean, a shop where the majority of the men employed are Union men, and where the employer is known to be in sympathy with the Union. It is not intended that the employer shall not be free to pick and choose his workers. But it is intended that if in bad faith, he discriminates against Union men or fails honestly to give preference to Union men, then he is not conducting a "Union shop." It is done *experimentally*, for it has never before been tried in this or any other industry. But the manufacturers be-

lieve modern conditions justify recognition of a well organized and disciplined union to this extent and that with good faith and wise leadership on both sides, coöperation between the two organizations can bring the industry to a higher position than it occupies even at present.

On the other hand, the Union recognizes that it cannot hope to accomplish this great social result unless it helps to drive out of the industry the sweatshop "boss," the tenement house worker, and the unscrupulous manufacturer.

A joint board of arbitration will be established, upon which representatives of the public will be present. No future strikes or lockouts will take place until grievances are first submitted to arbitration. In the saving of the great waste thus eliminated both parties expect to gain much.

I am aware in submitting this proposed agreement, it is fraught with great danger and that if accepted by my people, it goes "the limit."

On the other hand I see nothing more that can be asked except the "closed shop" which, as you know, was eliminated before we went into conference.

Please be good enough to give me your answer in writing by two o'clock today.

On the same day Mr. Brandeis sent me the following letter:

Dear Sir—Before submitting your letter of this day to Mr. London, after conferring with both you and Mr. London, I suggest that you modify the proposed declaration in the following respect:

First. Let the clause in the last paragraph on the first page, beginning with "but the manufacturers," read: "But the manufacturers can and will declare in appropriate terms their sympathy with the Union, their desire to aid and strengthen the Union, and their agreement that as between union men and non-union men of equal ability to do the job, they will employ the Union men."

Second. Add to the second line of the second page: "And that the preference will be given to Union men."

Third. Insert after the above: "The Union pledges itself to accept into its membership every applicant of good character on equal terms and keep its initiation fees and dues at a reasonable rate."

Fourth. Substitute for the second sentence of the first paragraph beginning on page 2 "the majority, etc.," the following: "They seek the Union shop, by which means they mean a shop in which Union standards prevail and the union man is entitled to the preference."

With these changes I am prepared to join with you in recommending the acceptance of the proposal.

At the end I wrote "I accept your modifications."

But this *modus vivendi* proved to be unacceptable to the union. There can be no question as to the sincerity of the leaders of the union. They were all, personally, brave, self-sacrificing men. But unfortunately they had created a Frankenstein. To have gone back and told the mass of the working people that they had won everything but the closed shop seemed to them impossible. In consequence, the conferences broke up. The strike was renewed. More heads were smashed,

more shops stopped work, more shops opened in other cities. Employers signed individual agreements accepting the closed shop, secretly vowing that they would repudiate them immediately after hostilities were over. Those employers who fought the closed shop as matter of principle continued their fight and lost large sums of money, their less scrupulous competitors manufacturing garments under strictly closed shop agreements. This was the situation which again, as counsel for the employers, I presented to the Supreme Court. Upon the evidence presented, including the record of the conference, the Court said:

The primary purpose of this strike is not to better the condition of the workman but it is to deprive other men of the opportunity to exercise their right to work and to drive them from an industry in which, by labor, they may have acquired skill and which they have a right to pursue to gain a livelihood without being subjected to the doing of things which may be disagreeable or repugnant. That this is the motive which animates the combination of defendants is clear from the correspondence, the negotiations, the conferences, and the acts and conduct disclosed in papers before the court.*

The judge who wrote this opinion was made the subject of ridicule and abuse, and, of course, the lawyer for the association came in for his share. But this deci-

* *Schwarcz v. International Ladies' Garment Workers' Union*, 68 Misc. (N. Y.) 528; (534).

sion sounded the death knell of the closed shop as part of the propaganda of the garment workers of New York. When later the preferential union shop was accepted in lieu of the closed shop, it was followed by similar protocols in other industries in New York, Philadelphia and Chicago,* and was made the basis of strikes in the men's clothing industry in New York City, Chicago, Rochester, and Baltimore. I think it may be said with accuracy that, so far as the Hebrew trades of New York are concerned, the propaganda of the closed shop as a means for improving the condition of the workers has been abandoned. As this chapter is being written, it is reported that the Ladies' Garment Workers have accepted an agreement in Chicago with the cloak manufacturers' association on the basis of the preferential union shop instead of the closed shop. In January, 1912, after a year and a quarter's experience, the editor of *The Ladies' Garment Worker* wrote concerning the closed shop:

. . . we believe that members prefer working at a preferential shop and earning good wages than working at a strictly closed shop, under the full control of the

* See Bulletins 144 and 145, Bureau of Labor Statistics, Department of Labor.

See agreement, Hart, Schaffner & Marx, Chicago.

See George Creel: A Way to Industrial Peace, *The Century*, July, 1915.

See also proposed agreements, Amalgamated Clothing Workers of America.

union, and go away with poor pay envelopes. After all, the union shop is only a means to increase the employees' earnings and not an end in itself.

In the hearings before the Industrial Relations Commission at Washington in the winter of 1914, the former head of Typographical Union No. 6 stated that if the national master printers' organization, with which the typographers had been at war for many years, was willing now to sign an agreement on the preferential union shop basis, similar to the one then existing in the cloak industry, he believed the union would cheerfully accept it. The following resolution adopted by all the members of the Federal Industrial Relations Commission is significant:

WHEREAS, The Commission finds that the terms *open shop* and *closed shop* have each a double meaning, and should never be used without telling which meaning is intended, the double meaning consisting in that they may mean either union or non-union; Therefore, for the purposes of this report,

BE IT RESOLVED, That the Commission on Industrial Relations will not use the terms "open shop" and "closed shop," but in lieu thereof will use "union shop" and "non-union shop."

The union shop is a shop where the wages, the hours of labor, and the general conditions of employment are fixed by a joint agreement between the employer and the trade union.

The non-union shop is one where no joint agreement

exists, and where the wages, the hours of labor, and the general conditions of employment are fixed by the employer without coöperation with any trade union.

Wherever the terms are used in this report, they bear the interpretation as set forth above.*

The rejection of the proposal made on August first was a mistake. In industrial matters, as in political matters, mistakes have a way of correcting themselves, but the price paid for the correction is often a very high one. Experience is the most expensive way of correcting such errors. For four weeks after the first of August the strike continued. The newspapers were full of accounts of disorder and of accounts of the hardships of the workers. Finally the pressure upon the charities of the City of New York became so great that leading citizens intervened, and through the good offices of Mr. Louis Marshall, the distinguished New York lawyer, Mr. London and I were brought together, with the approval of our clients, for conference. The mistake was corrected. The proposal of August 1, 1910, became the Protocol of Peace of September 2, 1910. This document was the governing instrument for the industry until May 17, 1915. It is printed in full as Appendix A.

* Report of Federal Commission on Industrial Relations (1915), p. 253.

CHAPTER III

THE POLICY OF THE PROTOCOL

WHEN a strike is settled, it means that the parties have come to an understanding. As in the case of all other agreements, it is usually reduced to writing, if for no other reason than to preserve ready evidence of the terms. When such agreements are made between a group of employers and a group of workers, the process is called "collective bargaining." Such collective agreements are quite prevalent in Great Britain. In the "Report on Collective Agreements between Employers and Workpeople in the United Kingdom" published in 1910, issued by the Board of Trade (Labor Department), Sir George Askwith reports that there were then in existence one thousand six hundred and ninety-six such agreements involving two million four hundred thousand people. In the introduction, Sir George Askwith says:

The wide prevalence of these arrangements in our most important industries must have an important influence on industrial enterprise, for when the level of wages, the length of the working day, and other probable conditions of employment are regulated, for specified periods of

greater or less duration, by clearly defined agreements, the employers concerned must be enabled to calculate with precision that part of the cost to production which will be represented by labour; however, when these agreements bind the whole or a very large proportion of the firms engaged in a given trade, the danger of undercutting by rivals who find it possible to obtain labour at a lower price is materially reduced.

In the more recent report of the British Industrial Council on its "Enquiry into Industrial Agreements," dated 1913, the Council says:

18. The value of efficient organization on the part of employers and work-people as a means of securing the due fulfilment of industrial agreements is very clearly demonstrated by the experience of the different trades of the country.

29. The desirability of maintaining the principle of collective bargaining—which has become so important a constituent in the industrial life of this country—cannot be called into question, and we regard it as axiomatic that nothing should be done that would lead to the abandonment of a method of adjusting the relationships between employers and work-people which has proved so mutually advantageous throughout most of the trades of the country.

This result has been brought about in Great Britain through encouragement by the Board of Trade of the making of trade agreements, and through the frequent application of the Conciliation Act of 1896, now known

as the "Trade Disputes Act" (59-60 Vict., Chap. 30, 7th of August, 1896).

The agreement between the International Ladies' Garment Workers Union and The Cloak, Suit and Skirt Manufacturers Protective Association was a "collective agreement." It established a minimum scale of wages for week workers, maximum hours, number of holidays to be observed, limitation of hours of overtime, prohibition of home work, requirement for electric instead of foot power, etc. In these various directions thus recorded the workers made marked advances, as is indicated in the following recent statement by the chief executive officer of the union:

The protocol afforded positive gains. Even the seemingly petty provisions requiring the abolishment of foot power, and the introduction of electric power for operating machines, was a gain that could be felt in the very bone and marrow. The regulating of deposits for tools abolished another hardship. A cloakmaker suffering starvation for months, upon finding employment, had to hunt for sums of \$3.00 and \$5.00 to deposit with the employer for the tools he was to use. From pressers a much larger security was exacted. In practice this amounted to a payment for the privilege of securing the job; and the difficulty of having these sums refunded upon their leaving the firm's employ, was a hardship just as oppressive. The protocol fixed \$1.00 as the sum of this deposit, for which the employer was required to give a formal receipt, and introduced similar improvements. These reforms cannot be overestimated. They have

modernized the trade. Add the fifty-hour week, the preferential shop and the Board of Sanitary Control and it must be granted that the reforms were of profound significance.*

A few illustrations of the betterment of individual workers' conditions are taken as examples, from Bulletin 147, Bureau of Labor Statistics, Department of Labor.†

* B. Schlesinger: Our Recent Struggle and Its Results, *The Ladies' Garment Worker*, September, 1915, p. 15.

† "After the settlement of the strike, in September, practically every individual in the 200 studied was earning more than before the strike. . . .

"*Presser No. 3.*—Born in Russia, in 1887; . . . about one year after arrival in the United States, at 21 years of age, entered the industry, learned the trade in the shop, beginning as a piece presser; worked two weeks for nothing as a learner, then 3 weeks at \$3, then a few weeks at \$3.50, then a few months at \$5, and by the end of his first year had worked up to \$8 as an upper presser on skirts; in 1910 he was making \$10, which was increased to \$16 after the strike; during 1911 he was out of work, except about 3 months while he was with a circus; during 1912 he worked as a reefer upper presser at \$14, and in 1913 as a jacket under presser at \$18. . . .

"*Presser No. 4.*—Born in Russia, in 1878; . . . came to the United States in 1905; . . . after about 2 years in New York, entered the industry at 29 years of age, learning the trade in the shop; began as an under presser, working for 5 weeks at \$4, and then for 2 years at \$7; in 1910 he made \$9 as an under presser, but after the strike made \$15 as piece presser; since 1911, under presser at \$18. . . .

"*Presser No. 5.*—Born in Roumania, in 1861; . . . came to United States in 1902 and entered the industry at once, at 41 years of age; began as piece presser, working 2 weeks for nothing, then for 3 months at \$3 per week, then at \$7; for 2 years worked at \$9; by 1910 was making \$12 and \$13 per week, and since the strike \$19 as skirt upper presser; learned the trade in the shop from other workers. . . .

"*Presser No. 6.*—Born in Russia, in 1874; . . . Came to United States in 1904, where he was a peddler with a pushcart for about a year and a half; after about 2 years in the United States, at 32 years of age, began

Quite apart, however, from immediate material gains guaranteed by these specific provisions of the Protocol, the document contained general provisions of much

as skirt under presser, learning the trade in the shop; worked 2 weeks for \$5 per week, then several months at \$8, then a year at \$12, and by 1910 was making \$16, and by 1912 became a jacket upper presser at \$21. . . .

"Cutler No. 1.—Born in Italy in 1890; . . . came to United States in 1900 and 6 years later, at 16 years of age, entered the industry, learning the trade in the shop; began as a learner, making \$5 to \$8 the first year; worked one year as a canvas cutter at \$10, then 2 years as a cloth cutter at \$14 and \$16; at the time of the strike in 1910 he went into business for himself, manufacturing willow plumes; in 1912 returned to the industry as a cloth cutter at \$25. . . .

"Cutler No. 3.—Born in New York, N. Y., in 1893; . . . in 1907 went to work as an errand boy at \$4 per week; in 1908 was collector for a cotton house at \$7, and in 1909 shipping clerk in a cloak house at \$7; in 1910, at 17 years of age, he entered this occupation as a learner at the cutting table, starting at \$4 and working up to \$11 in 6 months; at the time of the strike in 1910 he went to Detroit, where he secured a job as a mechanic in an automobile factory at \$15; in 1911 he returned to New York, making \$25 as a cloth cutter since that date. . . .

"Cutler No. 4.—Born in United States in 1891; . . . in 1904 went to work as a stock clerk at \$6, the next year making \$8; the following year was office boy and apprentice draftsman in an architect's office at \$10, and then for 2 or 3 years was shipping clerk, stock clerk, and factory bookkeeper at \$12; after the strike in 1910 he entered this industry, at 19 years of age, as a canvas cutter at \$12; during the past 2 years he has been a cloth cutter at \$25; learned the trade in the shop, beginning as canvas cutter. . . .

"Cutler No. 6.—Born in Russia in 1891; . . . came to United States in 1902 and worked in leather trade 4 years; in 1906, at 15 years of age, entered this industry as canvas cutter; learned the trade in the shop, paying \$25 for the privilege and in addition working 4 weeks without pay; after that received \$6 per week, and in 2 years was making \$14 as trimming cutter; since the strike in 1910 has been making \$20 as trimming cutter. . . .

"Cutler No. 8.—Born in Italy in 1874; . . . came to United States

greater import in their ultimate consequences. These were the provisions for the "Preferential Union Shop," the Joint Board of Sanitary Control, the permanent Board of Arbitration, the Board of Grievances, and the prohibition of strikes or lockouts during the life of the agreement. Each one of these phases of the agreement deserves separate treatment; but underlying all of them was a policy quite definite and concrete in the minds of those who drew up the document. It is this general policy and the institutions created to carry it forward, now tested by five years of actual experience, which warrant study and reflection.

The experiences prior to and during 1910 have been reviewed not with any idea of reminding either side of its mistakes, but to put light side by side with shadow. Comparison between the ideal for which we are striving and the gains actually made has its legitimate encourage-

in 1877; went to work in 1886 pulling bastings at \$1.25 to \$2 per week; beginning in 1889 was for several years an operator on men's clothing at \$3 to \$9, and then jacket tailor at \$10; then for 3 years a contractor in men's clothing line; in 1900, at 26 years of age, he entered this occupation, learning the trade by taking private lessons from a cutter in the latter's home; made \$20 as cutter on men's clothing and \$22 on cloaks and suits up to 1910; since the strike in 1910 has been making \$25 as cloth cutter on cloaks and suits. . . .

"*Cutter No. 10.*—Born in Austrian Poland in 1892; . . . in 1909 came to United States and entered this industry at once, at 17 years of age, learning the trade in the shop as a helper trimming cutter; began at \$3 and was making \$8 in 1910 as assistant trimming cutter; since the strike has been making \$18 as trimming cutter. . . ." (Pp. 139, 140, 142, 143, 144.)

ment; but such comparisons, to be of real value, must mark the difference between two points of progress.

The Protocol has been called "a lawyer-made instrument." This is true. It was but natural that the implicit policy underlying its phrasing should be shaped by such experience and learning of the world's efforts to secure justice by law as the framers could bring to their task. A rather warm admirer of its provisions wrote recently that it was of a kind with our Federal Constitution. Of course, he overestimated its value. But it is true that it was the first attempt to introduce a Constitution—a rule of law and order—into the industry. Now, no one knows better than the lawyer that, without power to enforce law, law is nugatory. Criminal statutes without penalty have no value. Some of our best citizens are only observant of the law because they fear the consequences. No Hague Tribunal can make peace certain without some police power to enforce its decisions. The judgment of the United States Supreme Court would be of no value, if there were no United States marshal with the power of the Federal Government back of him to execute the court's warrant. Indeed, the document authorizing the marshal to act is called a "writ of execution." By the same experience, no one knows better than the lawyer the futility of force as a means of making law or determining the justice of any cause. It seems incredible that there were times

when grave moral issues, grave legal questions were determined only by trial by battle, the ordeal or the duel. It was not until 1819 that trial by wager or battle was abolished in England. As late as 1817, one Abraham Thornton, acquitted of the charge of murder, threw down the gauntlet and offered, on an "appeal of murder," to test the validity of the charge by battle. The complaining relative of the deceased, refusing to take the challenge, let the appeal drop, and this was the last case of trial by wager or battle. Although the Romans had a system of trials, trial by jury as it is now known did not come into general practice until the latter half of the 12th century, under Henry II.* The ordeal was abolished in 1215.† If ever we are impatient with the results of civilization's efforts to adjust international matters by the processes of reason, let us recall that we are scarcely a century away from the time when the determination of private disputes by the rule of the strong arm was finally abolished, and we are but seven centuries away from the introduction into English jurisprudence of the system of trying facts before juries. And let us not forget that even at the present moment we are witnessing the effort of a single nation to demonstrate that *power*, applied *efficiently*, is the *only* method for making moral progress. If we are so backward in

* Pollock and Maitland: "History of English Law," Vol. I., p. 144.

† *Id.*, Vol. II, p. 599.

international relations, is it any wonder that the flame of faith in the juridical method of administering justice should flicker?

If this, then, was "a lawyer-made document," we should expect to find in it provisions for a permanent tribunal of some sort that should be constituted as nearly as practicable the supreme court of the industry; and provisions likewise inhibiting resort to war, *i. e.*, strikes and lockouts, so long as such a tribunal existed. The foundation for such a tribunal was first suggested by the union. In its communication looking to the conference of August, 1910, the union stated that to remedy its grievances it was, in its opinion, "necessary . . . to establish a permanent board of arbitration which is to settle grievances, the union and employers to be equally represented on the board of arbitration. . . ." One of the striking features of the Protocol is the complete absence of time limit. It has been frequently referred to as a perpetual agreement; but this is a misuse of terms; in fact, it could be terminated instantaneously by either party. So long as the parties had sufficient confidence in each other and in the Board of Arbitration to keep the Protocol alive, it would live. And the Board was selected before any controversy had arisen. The value of a Board of Arbitration selected in advance of any controversy has long been understood by students of the larger problem of arbitration.

James Brown Scott, in the introduction to the Proceedings of the 1912 Conference of the American Society for the Judicial Settlement of International Disputes, thus indicates the principal advantages of a truly permanent court composed of judges (pp. 9-10):

Parties in controversy are not in the frame of mind to create a tribunal, whereas, if the tribunal existed, they might be willing to submit the case to its decision. Those who have had experience in such matters know that it is hard to agree upon judges, yet that nations are unwilling to submit their disputes to a tribunal whose constitution is unknown. Delays thus occur, whereas the case should be decided promptly and removed from the field of international controversy. Again, judges chosen for a particular purpose are supposed to be friendly to the appointing powers, otherwise they would not have been selected; and international awards often betray traces of compromise. Again, a temporary tribunal does not bind another different temporary tribunal any more than it is bound by its predecessor, if it can be considered to have a predecessor. The decision is not likely to be a precedent, as would inevitably be the case if it were decided by a permanent tribunal composed of the same judges passing upon a like question.

It is common knowledge that international law is not developed by the awards of temporary tribunals. The advantage, in fact the need, of an authoritative interpretation of international treaties or agreements requires neither elaborate statement nor argument, and it is obvious that the decisions of a permanent international court constituted by the parties to such treaties or agreements would bind all of the contracting parties forming

the judicial union, just as the decisions of the Supreme Court of the United States bind the members of the American Union. Finally, the temporary tribunal is costly in comparison with a permanent court.

In connection with the negotiations for a permanent treaty of arbitration between the United States and Great Britain, Lord Salisbury, writing to Sir Julian Pauncefote in March, 1896, in reference to the class of cases in which differences might arise involving issues which concerned the State itself, considered as a whole, said:

If the matter in controversy is important, so that defeat is a serious blow to the credit or the power of the litigant who is worsted, that interest becomes a more or less keen partisanship. According to their sympathies, men wish for the victory of one side or another.

Under the "preferential union shop" arrangement, the manufacturers undertook to strengthen the union. Their purpose was clearly understood by both parties. If there was to be peace and order in the industry by restraint of the passions of men and resort to reason instead of force, the strong power of the workers' own organization must be welded into some sort of a police department for the industry, and, likewise, the employers' organization must be another arm of such a police department.

For all of the advances granted to the workers by this agreement, the employers received but two substantial considerations in exchange—the promise of a rational and peaceable method for securing adjustment of future controversies and the equal enforcement of standards and wage conditions throughout the entire industry. In the conference over which Mr. Brandeis presided on the 29th of July, 1910, I said, on behalf of the manufacturers:

Now, one of the things that we welcome, in this situation, is the possibility of establishing standard rates of compensation throughout the industry. We want, if we are going to agree to pay your people a certain standard—we want to be sure that our competitor, Mr. Dyche, will not be able to get the work done for less than that; that is the difficulty. So long as this has been left, not as a matter of regulation, but as a matter of competition, there is nothing to prevent the worker from working for whatever he can get, and there is nothing to prevent the employer from cutting him down to the lowest terms, and we are driven of necessity to compete with the others who are paying the lowest wages, so that the result of it is the constant lowering of the wage instead of increasing it. We recognize that just as you must have recognized it before, and I want to say that in this connection of the wage standard we seek *in the organization of your Union* one of the strongest means by which to prevent the inexorable law of competition, reducing the standard of living in your industry and *we welcome your Union for that*, if not for a great many other things. All

we want though is some reasonable expectation that the Union is going to live up to its part and to this promise to us.*

This was the ground-work of the expectation of business men, looking forward to a better organization of industry and ready to join in an effort to secure it. Accordingly, they agreed to strengthen the union and, in coöperation with it, to bring order out of chaos. If such a result could be accomplished, the social and the business aims of the industry could be harmonized. Of necessity, the problem was one requiring for its solution the help of both parties. There would be conflict of interest, but in spite of the conflict there could be agreement between the manufacturer of broad outlook and the labor leader who sought improvement in the working conditions in the industry. Both had a common task. Cloak manufacturers are no better and no worse than lawyers. If the Bar Association had no discipline committee, the roster of convicted and disbarred lawyers would not be so long. It is the associated effort to raise the profession that makes for cleaner conduct generally. It was the conception of the industry, as in a measure, a profession in which mere gain or livelihood was not to be regarded as the sole object of activity, that gave the breath of life to the Protocol and inspired the leaders. This spirit, this ideal, no lawyer could give to his clients.

* Minutes of Conference, July 29, 1910.

He could bring method to carry into actual practice and show the way, but he could not furnish the vision or the faith. And the natural method was that of parliament and the law courts—orderly debate, study, controversy—but decision by a process of reasoning, not of coercion by one power against another. The men who dreamed of such a program knew well enough that the millennium would still be far off. And they knew that the introduction of the parliamentary method into government, like the introduction of the juridical method for the settlement of private disputes, would not bring about complete and uniform justice. They knew that so long as laws must be made and administered by human beings, with the defects of temper and of intellect of human beings, error would be sure to arise. The faith of the parliamentarian and the lawyer that, in the long run, justice is more approximately secured and progress made with less waste by the parliamentary and juridical method, is based upon the solid foundation of human experience.

The Board of Grievances was created to take care of ordinary shop difficulties that would not require the services of the higher tribunal. Its procedure was nebulous. The protocol contained the barest outlines of its functions. The lawyers who drew the protocol knew the evils of the law's delays and the consequences of complexity of procedure. They sought to devise the

simplest method possible for ascertaining truth in a shop or factory controversy.

This, then, was the policy of the Protocol: Assuming controversy and conflict between parties having divergent interests as inevitable, that such controversy and conflict should be put upon the plane of procedure of civilized and orderly men; that justice, however approximate, should be arrived at by the rational method, and that law and order should take the place of anarchy.

CHAPTER IV

THE JOINT BOARD OF SANITARY CONTROL

IN 1910 the factories of the cloak and suit manufacturers were distributed in various parts of the city. Some were on the lower East Side, some were in Greene, Wooster and Mercer Streets. But the larger manufacturers were in loft buildings in what was then known as the "uptown" district. This district embraced Fifth Avenue and the adjacent side-streets as far north as Twenty-seventh and Twenty-eighth Streets. The better sanitary conditions were to be found in these larger loft buildings, where some of the leading manufacturers had already established modern lunch and rest rooms for employees. That there were unsanitary conditions in many shops both in the loft and East Side districts could not be disputed. In the strike of 1910 much publicity was given to both the good and the bad sanitary conditions in the industry. Newspaper men and women visited the factories and reported upon the very bad conditions in some parts of the city and the very good conditions in others. It was but natural that the representatives of the union should dwell upon the bad conditions and the representatives of the association

should dwell upon the good conditions. When, however, the list of grievances to be discussed at the conference to be held in July, 1910, was submitted by the union, no mention was made of the sanitary conditions in the industry.

As counsel for the manufacturers, I thought it weakened their position to be obliged to face this constant criticism. But quite apart from this line of reasoning, it seemed to me that the industry itself ought to assume the responsibility for its own sanitary conditions, as the Bar assumes responsibility for the ethical conduct of its members. State and local inspection had broken down. Only by the coöperation of both the employers and the workers could any marked improvement be made. I believed that both sides should bring the influence of the public to bear upon the problem and to solve it in an intelligent way. The process of reasoning naturally led to the conception of a triangular board, made up on one side of representatives of employers, on the other of the workers, and on the third of the public, vesting in the board all the power that the union and the association could give, and concreting it with all of the power and influence that the public could bring. I presented the matter to my clients and found that they were more than ready to authorize me to offer my suggestion to the union. The record shows that on the 29th of July, 1910, the matter was presented in the following language:

May I say this, that in the published discussion of this strike emphasis seems to have been laid upon the unsanitary conditions in the industry, and the better class of manufacturers were very sensitive about that, because of the fact that they had been making earnest efforts to create sanitary conditions and had met considerable difficulties on the part of their employees. Now, undoubtedly in some of the shops of the cloak manufacturers unsanitary conditions exist, and we have learned since these contracts have been signed up that contracts have been signed with some manufacturers who, according to our standards, have unsanitary shops, and we were rather astonished when the statement of grievances came to us that the sanitary conditions were eliminated, as a grievance. In the statement of grievances there was nothing said about sanitary conditions. I was very glad, therefore, when Mr. London, in making up the topic, included that for discussion here. Now, we are very much concerned about this question, because we have some pride in our industry, and we know that it is exceedingly difficult to observe sanitary conditions. I am frank to confess that I do not see that it will make very much progress here to go into the specific details of unsanitary conditions, and I will suggest to my learned brother that he take under advisement with his people the proposition, that both parties establish as the result of this conference a board of sanitary supervision, on which there shall be people representing the public who shall endeavor to establish a standard to which factories in this industry shall conform, and when that board of sanitary control makes its recommendations, we will legislate for our members on our side, so that no worker will work where these conditions do not exist, and no honorable cloak manufacturer will remain a member

of our Association if he does not observe these conditions.*

The same afternoon the proposition was accepted by the union and a general outline of the method is contained in the following statement then made with the full approval of my clients:

We realize that the suggestion that I made requires a great deal of efficient work to carry it into effect. We are prepared, on our part, I may say that if the suggestion is adopted, to establish a corps of inspectors, paid inspectors. If your organization cannot afford to pay the whole expense, we will bear the larger burden of it. We are perfectly willing that you shall bear half of the expense, if you can do it out of your organization funds, but we want this general board of control to be so effective—to have reliable people, people whom your committee selects, whose business it will be to visit, not only the shops of our own members, but as far as possible, the shops of non-members of our association, and let their reports be the reports on which the General Board of Sanitary Supervision will act. That is going to require efficient management; going to require efficient skill; going to require good inspection, and we expect to get out of it, by way of return, the knowledge on our part that no loose criticism can hereafter be made,—but it will have to be definite, and in addition to that, we will be able to make practical the pride that we have in our industry at the present time. Now, we do not pretend to be white-robed angels on our side; we do not pretend that every man in our association has reached the highest stage of human

* Minutes of Conference, July 29, 1910.

development, but we are going to do our level best to raise him to that standard if we can. We are going to do our level best to make the standard clear, and we are going to do our best to make it enforceable, and we want you to feel that all of your people are not white-robed angels; to see that you have your fair share of the job, and you must be willing to undertake it with us. We will join hands, and we will get out of this strike . . . something that will lift the entire standard of civilization in our city.*

The provision of the Protocol as it was signed on the 2d of September, 1910, contained the following:

The parties hereby establish a Joint Board of Sanitary Control, to consist of seven members, composed of two nominees of the manufacturers, two nominees of the unions, and three who are to represent the public, the latter to be named by Meyer London, Esq., and Julius Henry Cohen, Esq., and, in the event of their inability to agree, by Louis Marshall, Esq.

Said board is empowered to establish standards of sanitary conditions, to which the manufacturers and the unions shall be committed, and the manufacturers and the unions obligate themselves to maintain such standards to the best of their ability and to the full extent of their power.

The scheme thus vaguely outlined at the end of July, 1910, became an actuality in September. The Board was formed with distinguished representatives of the

* Minutes of Conference, July 29, 1910.

public and the two representatives from each side. Appropriations were freely voted and a careful survey of the industry made. Such a survey has been regularly made every six months since that time. The gradual improvement in sanitary conditions is disclosed in the printed bulletins and reports of the Joint Board of Sanitary Control. The figures showing the gradual elimination of cellar shops, fire traps, pest holes and like conditions in the industry are most graphically displayed. The Board has had exhibits at the First and Second Expositions of Safety and Sanitation and has been awarded Gold Medals. It has had an exhibit at the exposition in San Francisco and has been awarded a Bronze Medal. No one has recognized its efficacy and appreciated its value to the community so well as the Commissioner of Health of the City of New York, who in July, 1915, commenting upon the termination of the Protocol stated publicly:

The effectiveness of its work (the Board of Sanitary Control) has been universally recognized and commended, *and the program of the Joint Board is to-day the official program of the Department of Health for the sanitary regulation of industry generally.*

The need of sanitary industrial regulation is obvious. Regulation by compulsion, however, is not and never can be wholly satisfactory. There is safety in self-respect, and an industry which undertakes to maintain by its own efforts proper sanitary standards, not only protects

itself but is an aid to society. For these reasons the Department of Health is endeavoring to arouse a livelier interest in and a better understanding of sanitary matters in various industries. Our two strongest arguments are these: first, that sanitary standards are desirable; and second, that the maintenance of sanitary conditions is practicable through voluntary effort, in proof of which heretofore it has been necessary only to point to the actual record of the Joint Board of Sanitary Control. *The discontinuance of that body is a grave loss to the public-health movement.**

Miss Lillian D. Wald, Chairman of the Executive Committee of the Joint Board of Sanitary Control, writing in her book, "The House on Henry Street," says:

(P. 283). Since those days (strike of 1910) cloaks are no longer made in New York tenement homes, and the once unhappy, sweated workers, united with other garment-makers, have been lifted into eminence because of the unusual character of their organization.

(Pp. 284-285). High sanitary standards and a living wage, with reasonable hours of employment, were assured so long as both parties submitted to the terms of the protocol. Whatever changes in the administration of the trade agreement may be made, the protocol has established certain principles invaluable for the present and for future negotiations. The world seemed to have moved since we shuddered over the long hours and the germ-exposed garments in the tenements.

* Letter, S. S. Goldwater, M. D., to *The New Republic*, appearing under heading "Protocol Aided Public Health," issue of July 24, 1915, p. 314.

The success of the Board as an institution must be regarded as unqualified. The verdict is unanimous. When in May, 1915, the employers found it necessary, in their judgment, to terminate the Protocol, they felt, nevertheless, that the work of the Board of Sanitary Control should be continued. Though the termination of the Protocol left no legal basis for the institution, yet on the 11th day of June, 1915, the employers wrote the Chairman as follows:

NEW YORK, June 11th, 1915.

Hon. WILLIAM J. SCHIEFFELIN,
31 Union Square, East,
New York City.

Dear Sir:—

The very excellent work done for the cloak industry during the past five years by the Board, of which you were Chairman, should, in our judgment, be continued.

Accordingly, we send you our check for the regular quarter due July 1st, 1915, and ask that in the present situation, the representatives of the public take the credentials of the Cloak, Suit & Skirt Manufacturers Protective Association and act for them. We have entire confidence in the management and in the work of the directors, and so far as we are concerned will give it our fullest support.

Very truly yours,
THE EXECUTIVE COMMITTEE.
CHAS. HEINEMAN,
Chairman.

Dr. Schieffelin replied as follows:

June 21st, 1915.

*To the Executive Committee of the
Cloak, Suit and Skirt Manufacturers' Protective Assn.,
MR. CHARLES HEINEMAN, Chairman,
200 Fifth Avenue,
New York City.*

Gentlemen:—

The representatives of the public on the Joint Board of Sanitary Control in the Cloak, Suit and Skirt Industry beg to acknowledge receipt of your courteous letter of June 11th, enclosing check for \$1,250.00 and requesting that the work be continued by us for the Cloak, Suit and Skirt Manufacturers' Protective Association.

Owing to economies of Dr. Price, the Director, we are glad to say that there is sufficient money in the treasury to enable us to continue for the next two or three months without contributions from either side heretofore represented in the Joint Board and we are therefore returning the check. When the funds now in the treasury are exhausted and should the Cloak and Skirt Makers' Union also indicate its desire to have a continuance of the Joint Board of Sanitary Control, the members representing the public would be happy to serve both organizations.

We beg to remind your Association that the Joint Board of Sanitary Control owes its existence to the united action of the Manufacturers' Association and the Cloak and Skirt Makers' Union and that we can only act under a joint agreement of both.

With thanks for the appreciation you expressed for the

work done by the Joint Board of Sanitary Control, I beg to remain,

Very truly yours,
(Signed) WILLIAM JAY SCHIEFFELIN,
Chairman.

The Board lived from May to August without a vestige of legal authority. When the Mayor's Council of Conciliation met a few weeks later to bring about a renewal of relations (see *post*, 186) the first question put by the Chairman was: "Can we secure the consent now of both parties to the continuance of the Joint Board of Sanitary Control—regardless of what else may be the subject of controversy?" And both sides immediately answered "Yes."

In outlining the union's conception of the valuable features of the Protocol, its counsel has never failed to list first of all the beneficent work of this institution. Under the jurisdiction created by the few lines in the Protocol, this institution had raised the sanitary standards of the entire city, affecting the health and lives of not less than eighty thousand workers, had established a system of regular fire drills, a system of careful medical examination for the workers who applied for it, had created a Sick Benefit Fund, had worked out measures for fire protection, first aid to the injured, had studied a plan for insurance against tuberculosis and other infectious diseases, and had given instruction in hygiene

to the workers themselves. One of the inspectors (a former leader of the union) writes in the Bulletin:

It takes a good many arguments to convince them (the workers) that the body is nourished by fresh air, cleanliness and sunlight as well as food.” *

Here, then, is an institution which has demonstrated its soundness in theory and its utility in practice. Side by side, other institutions created by the Protocol failed to function so well. Careful study and comparison of both success and failure would seem to offer a fruitful method for arriving at sound conclusions.

It is no part of the work of this volume—indeed, the intent of the author is quite the reverse—to censure or to praise individuals. But the work of the Board of Sanitary Control cannot be understood unless we understand the Director † and his view-point. He was brought to an institution that existed only in theory, just as our U. S. Supreme Court existed only in the minds of the framers of the Constitution when it was signed. It was pioneer work. He came first as one of the two nominees appointed by the union; very soon thereafter, at the request of the two representatives of the employers and the three representatives of the public, he became the authorized acting head, with

* Rose Schneiderman.

† Dr. George M. Price.

the title of Director. From the very outset, the institution has had the loyal support of all three sides, time, money and energy being freely contributed. The Director was a medical man—a doctor who healed sores—but filled with a desire to do something better than alleviating individual cases of physical distress. To him preventive medicine was more important than healing the sick. Yet he had been a Health Department inspector and knew the practical difficulties of factory hygiene. The Joint Board offered to him a great opportunity for real social service, and incidentally the fulfillment of a deep personal ambition. He gave up his private practice for a more precarious position. (Who could tell how long the Protocol would last?) It is but simple fairness to state that the Board owes its unqualified success to this healer of sores.

The first step in a carefully outlined program prepared by him was to make a careful investigation into the facts. Never before was such a survey made of any industry. Conditions were found to be bad—not so bad as the Doctor found later in other industries when, following the same lines, he made surveys for the State Factory Commission—but bad enough. Before the great Asch Building fire, the Joint Board of Sanitary Control had already discovered the fire traps in the cloak industry and had given warning to the municipal government.

After investigation, the next step was legislation—the making of an Industrial Code of Standards for the industry by the parties themselves. Here the Board went slow. It did not seek to bring about the sanitary millennium all at once. To illustrate its conservatism: In 1914 the Director appeared before the State Industrial Board in opposition to certain standards offered for acceptance by that Board, because in his opinion they were too drastic for practical utility. The standards he recommended in 1910 were accepted by all parties, were amended and improved from year to year, and were enforced. How? By rigorous semiannual inspection, by using the disciplinary power of both organizations, the union and the association, by using the police power of the Labor, Health and Fire Departments, and by education of employer and worker both.

In a Bulletin issued by the Health Commissioner of New York City, recommending the Board's work as a model for similar industries, he says:

How well this organization has succeeded in its work can best be judged by those who have followed from time to time the published reports of its work. Certainly the results have been extremely gratifying. Perhaps the most important progress made has been in the education of both workers and employers. In fact, the main difference between the method of inspection and administration as adopted by the Board of Sanitary Control and

as conducted by State Labor Departments lies in the fact that the former have entirely abolished *police* and *detective* inspection. The object has not been to catch the manufacturer in a violation of the law or of the Board's regulations, or to force sanitation upon an unwilling and unsympathetic object of official attention, but to make employers and workers recognize the fact that sanitary standards are beneficial to both.*

The Board has published regular Bulletins,† giving outlines of its methods, comparative tables showing the progress in the betterment of conditions; it has held lectures, mass meetings, and has distributed literature widely among the workers, giving them suggestions for the better care of their health. And it has none but friends; employer, worker and social reformer all coöperating and finding in their task a common one.

What is there about its work peculiar or unique in effectiveness?

There has been pressure, of course, brought to bear for the enforcement of standards, but no coercion. At no time was there in evidence a policeman's club of any kind. The method has been the rational method of the doctor, the educator and the lawyer. Compare

* Weekly Bulletin of the Department of Health, City of New York, November 14, 1914.

† Copies can be had upon application at 31 Union Square, New York City.

its methods with those of the U. S. Commission on Industrial Relations.* Then compare the results. No blare of trumpets, no denunciation of one side or the other, no arousing of prejudices. Just a plain doctor or lawyer-like way of getting of the facts: *diagnosis*, then a doctor or lawyer-like way of finding a *remedy*—mind you, with full recognition of all the psychological factors involved—and in administering the job, a business man's efficiency producing enough small economies to make the average business man stare. A combination of the world's experience in sanitation and hygiene, brought down to date, with a practical, business-like administration, spurred forward by a deep social and humane impulse.

There is as much that is dramatic about such an institution as there is about a Red Cross hospital. There is more exhilaration to be found in flying an airship over the enemy's camp, but here is the longer-run service, the contribution of real and lasting value. I venture the prophecy that when the contributions of the union to social progress in this industry are inventoried and appraised, a higher mark of performance and merit will be given to the doctor nominated as its first representative than to the various and sundry persons, who in 1907 and 1910 broke the law and some one's head

* See editorial, The Short Cut, *The New Republic*, September 18, 1915, p. 168.

at the same time, moved, I make no doubt, by a love for their fellows no whit less deep than the Doctor's own.

Quite apart from the great advance in hygiene and safety in the industry itself, the Board set the example which made it possible, in 1913, to create a similar board in the dress and waist industry (where the Asch Building fire occurred). It brought about the State Industrial Board and furnished, as the Health Commissioner says, the very necessary example for all other industries.

But it did more. It demonstrated beyond cavil or criticism what can be done when employer, worker and public jointly utilize and utilize intelligently their power to accomplish a common purpose. The method employed was what the doctor calls the scientific method. The lawyer would call it the parliamentary and juridical method. Get at the truth first by finding and dissecting the evidence. Do it with no prejudice or emotion. Do not blink the facts. Hew straight to the line. Then apply to the facts the best principles of human conduct you can find, those only sustained by the experience of mankind. Put your prescription up in a judicial decree or in a legislative enactment. And where you have an industry in process of self-regulation, provide machinery for securing judicial and legislative determination.

But suppose you have no police power to enforce your decree or your legislative enactment?

And suppose the "principles of human conduct" you seek to apply have not yet been discovered?

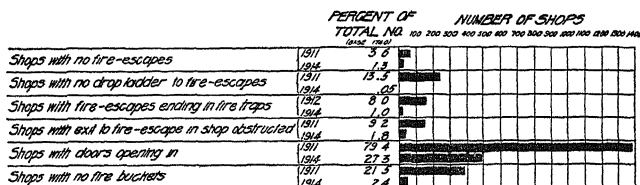
FOUR YEARS PROGRESS

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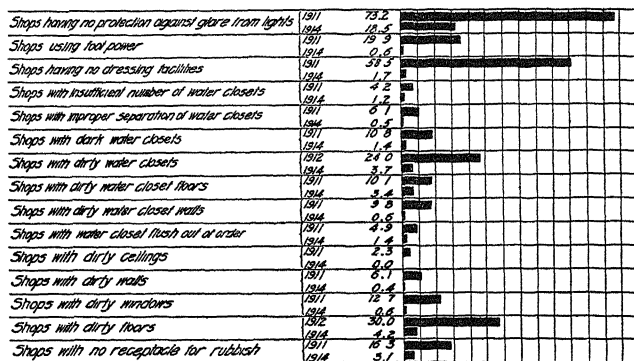
CLOAK AND SUIT INDUSTRY

1911-1914

REDUCTION OF FIRE DANGERS



IMPROVEMENTS IN SANITATION



UNIT: SCALE OF SANITARY CITIES
IN THE UNITED STATES
AND FOREIGN CITIES
BASED ON THE 1911 CENSUS

CHAPTER V

THE BOARD OF GRIEVANCES

FOR the purpose of securing some kind of law and order in the industry two institutions were created, the Board of Arbitration * and the Board of Grievances. It is but fair to say that those who devised the scheme of both institutions had nothing more definite in mind than the acceptance frankly of the probability of controversy and providing some ready machinery to meet it as it arose. Was it practicable to create machinery that would stand the strain of continuous and daily conflict? No one then believed that in the succeeding four and one-half years the jurisdiction of the Board of Arbitration and the Board of Grievances would be exercised in something like 16,000 cases. That cases would arise and that they could not be rationally settled by either the method of the strike or the lockout was clear in the minds of the lawyers who framed the Protocol. The eighteenth paragraph of the Protocol provided:

The parties hereby establish a Committee on Grievances, consisting of four members composed as follows:

* See paragraphs XVI and XVII of the Protocol.

Two to be named by the manufacturers and two by the unions. To said committee shall be submitted all minor grievances arising in connection with the business relations between the manufacturers and their employees.

It will be observed that this created a bi-partisan board. Its number was very soon increased from four to six on each side, with alternates. Its jurisdiction was not outlined in detail. Whether it was to be in the nature of a legislative body, a conciliation body, or a judicial body only subsequent events could and did determine. It has since become all three. Obviously the simplest cases to dispose of were those in which an employer had failed to observe the definite standards established by the Protocol. He had worked overtime when work was prohibited, or he had worked illegally on a holiday or a Sunday, or he had paid less than the scale. Such cases presented simple questions of fact. It is one of the striking and unique experiences of the workings of this Board that throughout its entire experience there never was a deadlock upon a question of fact.* (This statement was, it is true, controverted during the years 1912 and 1913 between the union and the association, and since the Board of Arbitration was unable to determine the question without a careful investigation into the records of the Board, such an investigation was made and was

* See Bulletin 144, Bureau of Labor Statistics, Department of Labor, p. 38.

subsequently adopted officially by the United States Department of Labor. It is now known as Bulletin 144 of the U. S. Department of Labor, Bureau of Labor Statistics, entitled, "Industrial Court of the Cloak, Suit and Skirt Industry of New York City." It demonstrates that upon questions of fact the parties could and did come to an agreement.)

Bearing in mind that the Board had no chairman, theoretically it was always subject to deadlock. Assuming that the representatives of the union would always stand by their member and that the representatives of the employers' association would stand by theirs, there was a strong theoretical probability of deadlock. But it is a high tribute to the resourcefulness of both sides that such deadlocks never, in fact, occurred. Acute controversy in the Board of Grievances and deadlock raged about more fundamental matters, matters of principle, or as they were called, Protocol Law; but for the solution of such controversies the Board of Arbitration was created. The very first session of the Board of Arbitration in March, 1911, was devoted to a careful study of such fundamental matters and incidentally of the work of the Board of Grievances. Before the Board of Arbitration the association charged that the provisions against strike had been repeatedly violated by members of the union without redress on the part of the employers. On the other hand, the union charged

that they had failed to secure adequate redress for complaints in "discharge cases." On March 14, 1911, the Board of Arbitration* rendered a decision upon these points and formulated, with the aid of counsel for both sides, "Rules and Plan of Procedure of the Board of Grievances." This was the first constitution or by-laws of the Board of Grievances. In its decision, the Board of Arbitration, speaking of the workings of the Protocol, stated (March, 1911):

From the evidence submitted upon this hearing and the statement of counsel for both sides, the Board is convinced that the Protocol has during the six months of its operation fully justified the expectations of its drafters, and that its operations have on the whole had a most beneficial effect upon the relations of the employers and employees in the cloak industry.

After reviewing and praising the work of the Board of Sanitary Control (it had made its first report), the Board said:

The work of the Grievance Committee, on the other hand, has not been as successful as that of the Sanitary Board.

Why? The Board answers:

. . . the fault for the defective operation of the Committee does not lie with its members or with the

* Then consisting of Louis D. Brandeis, Hamilton Holt, and Morris Hillquit.

spirit in which the proceedings were conducted. On the contrary, it appears that the members of the Committee, representatives of both sides to the Protocol, were at all times animated by a sincere and earnest desire to adjust all grievances brought before them promptly and equitably, and as a matter of fact, they have succeeded in adjusting disputes in a very large number of individual cases to the satisfaction of all parties concerned in such disputes.

The Board refers to the fact that in six months no less than 119 cases were brought before the Grievance Committee, and that of this number 107 had been adjusted, and only twelve were pending at the time of the hearings before the Board of Arbitration. It finds that:

The decisions in all cases were unanimous or nearly so, and there seem to have been no serious divisions between the representatives of employers and employees in any case.

Now note the following observation by the Board of Arbitration:

But the Grievance Committee when established by the Protocol, was largely an experiment. The Protocol was very meager on the question of the jurisdiction of the Committee, and wholly failed to provide for proper rules of its procedure.

Of course, if at the time of the signing of the Protocol the draughtsmen had stopped to agree upon a set of rules for the Board of Grievances, the strike would not

have been settled—there would have been no Protocol. Says the Board further:

The Grievance Committee thus had to evolve its own methods in the light of its experience and the exigencies of the situation as they arose from time to time.

It found that the Committee had endeavored “to adopt a complete and comprehensive set of rules of procedure for the Committee, but in that attempt certain differences of opinion (had) developed between counsel for both sides.” These differences of opinion the Board of Arbitration took up and disposed of.

Its final disposition was the establishment of the rules (Appendix B). The differences between the parties thus disposed of were important. They related to the enforcement of the provisions of the Protocol prohibiting shop strikes, and to the method of investigation into shop disputes. In short, the differences of opinion presented the problem of enforcement of the law and required again the invention of rational and simple machinery. There were no precedents to go by. For the enforcement of the law the following provisions were finally adopted as sections XVII, XVIII and XIX of the Rules and Plan of Procedure of the Board:

XVII. If a grievance arises because of the general stoppage of work of a shop or department of a shop, either by direction of the employer or because of or by

the concurrent action of the employees, upon complaint received, the clerks, or their deputies, shall immediately proceed to the shop or department where the trouble occurs. If the employer is responsible for the stoppage, he shall, upon the demand of the clerks, or their deputies, immediately recall all his employees, pending the adjustment by the Board of any grievance he may have, and he shall thereupon frame and present his grievance; if the employees are responsible for the stoppage, notice shall be immediately given to them to return to work pending adjustment of the grievance by the Board and the chairman of the Price Committee shall immediately direct them to return to work.

XVIII. A violation of the provision of Section XVII of these rules or of Section XVII of the Protocol, by either employer or employee, shall constitute a grievance to be presented to the Board of Grievances. If, after hearing, the Board finds the defendant guilty, the order of the Board shall be made the basis of prompt discipline in the Association or the Unions as the case may be. Such discipline shall consist of a suitable fine or expulsion. The action so taken shall forthwith be reported in writing to the Board of Grievances.

Under these rules the name of the tribunal was changed from "Committee" to "Board of Grievances."

Upon this branch of the subject, it will be observed, reliance is placed entirely upon the enforcement of the law by the party whose member offends. This principle of enforcement applies to each side. The association is to discipline its own member guilty of violating the law; the union is to discipline its own member guilty of vio-

lating the law. Each reserves the right of trial of its own members. Note here the distinction in method between the workings of the Board of Sanitary Control and the Board of Grievances: The Board of Sanitary Control could call to its assistance the powers of the State and the municipality and could bring to bear the pressure of public opinion. But for the suppression of the shop strike or the enforcement of Protocol standards upon members of the association, each of the parties to the agreement is dependent upon the other for the exercise in good faith of such pressure as it can bring to bear upon its own member. For the enforcement of standards upon employers not members of the association, the latter is dependent wholly upon the union. How far this proved effective we shall see later.

Upon the other branch of the controversy presented to the Board of Arbitration, namely, the method to be employed for ascertaining the facts and adjusting an ordinary shop controversy, there was devised the system of shop investigation by clerks and deputy clerks. This introduced an entirely new system, copied, so far as I know, from no other experience and later the subject of much controversy and criticism. It will bear careful analysis.

CHAPTER VI

THE CHIEF CLERKS AND THE DEPUTIES

THE March, 1911, session of the Board of Arbitration involved debate over a rule proposed by the unions, which meant in effect the authorization of the representatives of the unions or any persons designated by them to inspect shops, even where no charge had been lodged against the employer, in order, as stated by the union, to ascertain whether the provisions of the Protocol were being lived up to in such shops, and in order also to afford the unions an opportunity to investigate informal complaints, so as to determine whether they should be brought before the Grievance Committee. On behalf of the unions it was contended that in the absence of such a rule complete justice could not be done to the employees, for the reason that many of them would fail to present grievances, even if they were fully justified, for fear of being disciplined by the employer; and that, on the other hand, a preliminary investigation by the union representatives would avoid bringing before the Grievance Committee trivial complaints. The employers, on the other side, asserted that such a rule would result in frequent and arbitrary

visits of union representatives in the shops, would stimulate unnecessary complaints, disturb shop routine and cause needless friction between the employers and the employees. In short, they saw in the proposal of the union the reestablishment of the old-fashioned walking delegate. Doubtless the union had good reason for believing in the efficacy of the system it proposed. It seemed simple. Upon complaint of any member of the union the walking delegate would appear and endeavor to adjust the matter with the employer. If he failed, a shop strike would ensue. But usually the effectiveness of the threat was the determining factor in the adjustment of the case. If the walking delegate were of a conciliatory temperament and the employer was disposed to be fair, there might be little difficulty. On the other hand, if the walking delegate felt called upon always to fight for his side, the employer could not secure fair treatment, and there would be constant conflict. Justice would be administered, then, upon the basis of the temporary strength and weaknesses of the contestants and not upon the real merits of the controversy. Naturally, such a plan was not acceptable.

The Board of Arbitration, to meet both sides' requirements, adopted the method now outlined in Rules IV and XI (Appendix B). In brief, this system provides first for the submission of a complaint in writing by the organization whose member is aggrieved to the

organization whose member is complained of; then an investigation into the facts at the shops by representatives of both sides, attending at the same time, these representatives (the clerks) endeavoring to ascertain the truth, and as often as practicable coming to a joint verdict upon the evidence; finally, an adjustment of the difficulty by them, if an adjustment can be arrived at. If the clerks agree, it is an end to the case, except that the employer may appeal to the Board of Grievances. If the clerks deadlock, the matter then comes to the Board of Grievances for its consideration. Under this system some fourteen or fifteen thousand complaints were liquidated.

This system has been carefully studied. In May, 1913, the union having requested an amendment to the Protocol which would provide for an additional person to be known as the "Impartial Referee" to sit with the Board of Grievances, the union contended that it did not receive adequate justice under the existing procedure. The manufacturers' association denied the charge, contending that the claim of the unions could easily be disproved "by an examination of the records of the board of grievances; that the system proposed by the unions would be destructive of the existing system of arbitration and conciliation, and would practically put the control of the industry in the hands of a single outside person. . . ." The parties

having deadlocked on this point, an appeal was taken to the Board of Arbitration under Rule XXI. After numerous hearings before the Board, that body decided that before it could arrive at any decision it would make a careful study of the workings of the Board of Grievances, and thus reveal the nature and disposition of the cases it had passed upon, and "further to reveal the efficiency of this organization in fulfilling its primary functions, *viz.*, administering justice in the industry, supervising the adjustment of grievances by the clerks, and adjusting aggravated cases upon which the clerks could not reach a decision." This investigation was carried on by the same representative of the U. S. Government* who in 1912 had made a study of the industry for the United States Department of Labor.† His report is Bulletin 144, already alluded to. It contains in detail an analysis of the work of the Board of Grievances, a statement of the quality of the legislative and judicial work done by the Board, and an analysis of the character of cases adjudicated upon by the clerks and by the Board of Grievances. The investigation disclosed that out of a total of 7,656 complaints filed between April 15, 1911, the date of the creation of the Board of Grievances, and October 31, 1913, 7,477, or 97.7 per cent, were adjusted by the clerks. The balance,

* Charles H. Winslow.

† Bulletin 98.

179, or 2.3 per cent, were handled by the Board of Grievances. Of the latter group, 159 were settled by the Board. The remaining 20, the Board being unable to agree, were referred to the Board of Arbitration for final adjudication. Of these 20 cases, 12 involved the same disputed point—a controversy over the interpretation of the Protocol as to the payment for a holiday. As this involved a question of interpretation which could be passed upon finally only by the Board of Arbitration, it left but 9 actually deadlocked cases. In other words, one-tenth of one per cent of all the cases that arose during the entire period of the existence of the Protocol up to that time were deadlocked in the Board of Grievances. Of these nine cases, the investigation showed that they were cases involving serious and fundamental differences.

The findings of this investigation establish that, upon the whole, the system devised in 1911 worked satisfactorily in 99 per cent of the cases; yet because of the 1 per cent it broke down partially in 1913 and completely in 1915. Why?

CHAPTER VII

A SIDELIGHT

BEFORE proceeding further with the study of the cloak and suit industry, let us turn to another experiment in another city, in an industry very similar, though not precisely the same, but which owes its machinery in very large measure to the experiences in the New York cloak and suit industry. It is the story of the four years' experience of a clothing firm of national reputation,* synchronizing in time and method with the experiences we are studying here. The experience has been graphically reviewed under the title "A Way to Industrial Peace."† In 1911 a strike affecting the entire men's clothing industry in Chicago and involving fifty thousand people broke out. The strike was settled, so far as the one firm in question was concerned, by the establishment of an arbitration committee of three, one selected by the firm, one by the workers, and the two choosing a third. Provision was made that, "Said committee shall consider and adjust whatever grievances employees may have, and shall fix a method of settlement of grievances

* Hart, Schaffner and Marx.

† George Creel: *The Century*, July, 1915.

in the future, findings to be binding on both parties.”* On March 13th this Board of Arbitration handed down a decision which contained the following paragraph:

As to any future grievances, the firm shall establish some method of handling such grievances through some person or persons in its employ, and any employee, either by himself or an individual fellow worker, shall have the right to present any grievance at any reasonable time, and such grievance shall be promptly considered by the person or persons appointed by said firm, and in case such grievance shall not be adjusted, the person feeling himself so aggrieved shall have the right to apply to some member of said firm for adjustment of said grievance, and in case the same shall not be adjusted, such grievance may be presented to Clarence Darrow and Carl Meyer, who shall be constituted as a permanent board of arbitration to settle any questions that may arise between any of the employees and said firm, for the term of two years from April 1, 1911.†

After studying the New York experience the employers established a labor department and placed in charge a trained economist and industrial expert. To this department was given over the handling of all grievances. The work of the Board of Arbitration became so engrossing that it was soon found necessary to establish a subordinate tribunal. This tribunal consisted of a trade

* George Creel: A Way to Industrial Peace, *The Century*, July, 1915, p. 436.

† *Id.*

court, composed of five foremen, five workers, and an impartial umpire. The head of the labor department for the employers became one of the two chief clerks of this board. The leader of the union became the other chief clerk. In 1913 the same controversy that arose in the New York cloak strike in 1910 came up, the fight of the union for the closed shop. The position of the employers was stated by the head of the firm as follows:

As long as the unions are working toward the ideal of justice to every interest connected with the institution and the highest economic efficiency—performing duty to everybody inside and outside the institution—employees, stockholders, customers, and the general public, we wish to see them strong. Because there is no guaranty that those who control the unions will hold to this ideal, we do not care to be committed to the “closed shop.”*

After careful study of the workings of the preferential union shop in New York, the parties agreed upon the following tentative working basis:

That the firm agrees to this principle of preference: they will agree to prefer union men in the hiring of new employees, subject to reasonable restrictions, and also to prefer union men in dismissal on account of slack work, subject to a reasonable preference to older employees, to be arranged by the board of arbitration, it being understood that all who have worked for the firm six months shall be considered old employees.*

* George Creel: A Way to Industrial Peace, *The Century*, July, 1915, p. 438.

The Board of Arbitration held also that the door of the union must be kept open for the reception of non-union workers; that initiation fees and dues must be maintained at a reasonable rate, and that if any rules be passed that impose unreasonable hardship or that operate to bar desirable persons, there may be instant appeal to the Trade Board or to the Board of Arbitration.

The verdict upon the experience in this industry is stated in the language of the head of the firm:

Industrial peace will never come so long as either employer or employee believes that he is being deprived of rights honestly belonging to him.

Arbitration and conciliation should be applied to all departments of a business wherever there is a conflict of interest. If nothing more, it insures exhaustive discussion of every matter of importance, gives everybody an opportunity to express his opinions, frequently brings to light valuable suggestions, and makes possible a higher degree of coöperation and team-work. It is a method to be employed continuously to secure harmony and satisfaction.

Patience and self-control are essential in administering a business on this basis. It is human nature to resent interference and to desire unrestricted liberty of action, but these conditions are not necessary and are often inimical to true success. Few men can use unlimited power wisely, and no wise man will dispense with checks which tend to keep him in the right path; certainly he will approve of checks calculated to restrain his agents from arbitrary and unjust acts to fellow employees. I have found that disputes once settled, even if one side

loses, are seldom causes of trouble. It is the unsettled disputes that are dangerous. This failure of adjustment is largely due to the lack of means for determining what is right or wrong, the lack of a common code, and the absence of a disinterested authority whose judgment is respected by both sides.

We did not realize, and we believe the majority of employers do not yet realize, the extent to which the attitude and conduct of their organized employees reflect their own policies and conduct.

In our own business, employing thousands of persons, some of them newly arrived immigrants, many of them in opposition to the wage system and hostile to employers as a class, we have observed astonishing changes in their attitude during the four years under the influence of our labor arrangement. They have come to feel that they can rely upon promises made by the company, and that justice will be done them by a system in which they themselves have a voice; and as a result, they are proud of their own honor, careful of their promises, and equally eager for justice to all.*

I heard this gentleman testify during the winter of 1914 before the United States Commission on Industrial Relations, and I heard him say then that he would not care to go back to the old system for any price. I know from personal inquiry and study of the reports of the firm that there is increased efficiency and productivity, higher wages and larger dividends. From both employer and union leader I have learned that the system works

* George Creel: *A Way to Industrial Peace*, *The Century*, July, 1915, p. 440.

to the complete satisfaction of both. The representative of the union in Chicago was, in 1914, called to New York to take charge for the Cloakmakers' Union of their interests, and would have continued, if he had not been called away to become the leader of the Amalgamated Clothing Workers of America, a new and insurgent organization with a membership close to one hundred thousand, made up of clothing workers in the men's line. In 1913, when I intimated to the head of the firm that the Chicago union leader with whom he dealt might be called to New York to take active part in the cloak situation, he told me that he would regard it as a distinct loss to Chicago, for, as he put it, it was due to the union leader's common sense and fair way of handling matters that the collective agreement had worked so well. He modestly refrained from mentioning his own part. Notwithstanding this approval on the part of the employer, this young leader retained the support and confidence of his own constituents, and, moreover, as I have stated, was later elected to the highest position to which they could advance him.*

The principles underlying the Chicago experience were the same as those underlying the New York experience. The machinery in each case was substantially the same. A Trade Board (Board of Grievances), a Board of Arbitration, and the dual clerk method of

* Sidney Hillman.

investigation and conciliation; the preferential union shop and joint working of union and employer, with an agreement to substitute the methods of reason and order for the strike and lockout. In the Chicago instance we find the system working to the complete satisfaction of the employer, the union and the public. It is a business as well as a social success. In New York it does not achieve the same complete result. Why not? If we find in the one case factors absent in the other, it may give the clew to the completer explanation.

Observe that the Chicago firm had a monopoly of a brand. Its name had been blazoned forth in magazine and newspaper pages for over a decade. It had boldly come to New York and challenged competition with the best of its New York competitors upon their own ground. Its brand or trade-name had cost—I am sure—at least a million dollars of advertising. It had keen competition, to be sure, but in addition to its application of modern methods of salesmanship to its business, it had introduced efficiency methods into its factory.

Observe that it was one firm dealing with a union—not two or three hundred different employers of varying ideals, education and business training. The head of the house and the union leader dealing with each other single-handed and when these two agree, the policy settled; moreover, certain to be carried out; no short circuiting and no crossing of wires. From the public

utterances of the head of the house we learn that he began by distrusting collective bargaining and ended, by slow degrees, in a plan to strengthen the union. He found it to the business interest of his firm to accord the fullest coöperation to the union leader. Observe that he must meet the keen competition not only of his Chicago associates but the competition of New York, Rochester and Baltimore. Yet he freely admits that he finds it much easier to work alone than to work in association with a group of his competitors. Observe, also, that the competition is the competition of large units, not small ones, where the strike is a more effective weapon. Observe that the same union leader represented the union in its dealing with the competitor shops, and the same standards are effectively maintained throughout the entire city.

Note the type of men on both sides. The head of the house, a man of education, of faith and of vision, and open to reason; the union leader, a man of faith and of vision, and open to reason, the latter outspoken in his disapproval of violence and all other kinds of law breaking, courting the approval of the disinterested public and trusting entirely to the reasonableness of the positions he takes to win their way, never blatant, never threatening, never coercive, quietly persistent and absolutely trustworthy in his statements and in his promises. Though it is known throughout Chicago that he and the

head of the house are in frequent intimate consultation, he retains, as we observe, the entire confidence of a union made up of more than a dozen different nationalities—to such an extent that later, with no effort on his part, indeed, without his preknowledge, he is chosen the national leader of the tailors. He trusts the head of the house and the head of the house trusts him. Each carries out his promises to the other. The head of the house, a man open to every new idea that can be tested by the standards of common sense. There is no newspaper agitation against the employer, no *klassenkampf*. There is a joint effort, by methods of reason, to achieve a common object: to improve the industry and thus improve the condition of the workers. The Chicago machinery moves with the same smoothness as does the machinery of the Joint Board of Sanitary Control in New York. The joint work of the head of the house and the union leader in Chicago bears striking resemblance to the work of the Director of the Sanitary Board in New York.

Perhaps we have gone far enough to set down for subsequent test at least three hypotheses consistent with the facts in the Chicago situation:

1. *Given institutions for preserving law and order in industry and for improving the welfare of the industry, the enterprise will prove valuable to employer and worker alike, provided it is carried out in a spirit of mutual helpfulness*

and with a recognition of the business factors in the joint problem. Given leaders on both sides who trust each other, the underlying spirit of the institutions will find expression in day to day progress.

2. Let either side seek to impose its will upon the other by coercion; let either side play unfair, and the institutions—however well-planned—will crumble and fall.

3. The consumer is an important factor in the problem.

CHAPTER VIII

THE NEW YORK CLOAK BUSINESS

THE competition between the man's personally selected tailor and the manufacturer of ready-to-wear garments is less than fifty years old. The Civil War created a demand for military garments in large quantities to be made up on short-time requisitions. This stimulated cutting many garments with one cut of the shears, and the experience led to the manufacture in large quantities of cheap civilian clothes ready to "put on your back," cheaper than you could buy them at the tailor's. It is within the memory of the present generation that handsome college youths first appeared on magazine pages wearing immaculately fitting dress suits, or tennis coats, or warm ulsters, and bade us discharge our tailors. From these advertisings grew the great men's clothing manufacturers whose brands are now known throughout the entire country, even abroad.

A half century ago a few enterprising clothing manufacturers conceived the notion of making women's mantles or wraps; first a woman's simple cape, then a tailor-like coat, then (when the shirt waist came in) a woman's separate skirt. They succeeded in making

the beginnings of an industry. With the introduction of finer art in women's wear, there came into being and grew with steam-engine rapidity the industry whose workers now number over a hundred and fifty thousand and whose product runs into millions annually. The men who developed the men's clothing industry were in most instances sons of immigrants. The men who developed the women's clothing industry were also sons of immigrants. But the workers in the shops were for the most part immigrants, though in the early period there were some Americans. There was quick transition from worker to employer. Among the employers to-day, few can be found who did not in their earlier days actually work in a factory. And many of them—perhaps the hardest taskmasters—have a history as strike leaders. In the early days, skill consisted in making large quantities cheap. It was an asset to have a large stock made up, ready for quick delivery. To-day, with styles changing overnight, large stocks are liabilities; the buyer waits till the last bell rings for the season's opening, then orders a few of each design to try out on the public, expecting re-orders to be filled on telephone, but knowing they must be made up for his order. To design all the varying morning, afternoon and evening clothes that beckon from beautiful shop windows or adorn handsome ladies in the Sunday supplement requires a high degree of artistic skill, a ready

and constant touch with the centers of fashion, a knowledge of textiles and their values, and an administrative ability of high order.* To lead in the industry in 1910 meant to have taste, skill, resourcefulness, imagination and courage. On the other hand, there was not much of that fine degree of factory efficiency nor that persistent search for small economies that now characterizes the successful factory of 1915.

The industry is a style industry. It is also a seasonal industry. This makes it part of the great unemployment problem of the country, upon which latter point we shall be called to dwell later. But because it is a seasonal industry, there is feverish work for six months and comparative idleness for the rest of the year and obviously twelve months' overhead charges for six months of operation.

The rents are enormously high. Factory must be near salesroom. The successful manufacturer is at once salesman, designer, factory manager, financier and industrial expert. All his departments, therefore, must be within his immediate reach. High-priced lofts near the city's hotel and railroad centers offer him his only opportunity.

He must have shapely and attractive mannequins to march about his salesroom and carry his creations be-

* See extract from Bulletin 147, U. S. Department of Labor, *post*, pp. 131-2.

witchingly. He must make frequent visits abroad, studying the Parisian designs and purchasing high-priced models.

All this takes head-work, nervous energy, and capital. According to all economic philosophy, the cloak manufacturer is a capitalist, but he has more hours of actual work to his daily stint than a day laborer, and if nervous condition is a fair test of physical well-being, he is little better off than the cutter or presser in his shop. He is bound to die young, because he burns himself up. The industry is far behind others of older growth in these important respects:

It lacks sub-division of responsibility. Each business is a one-man institution. It lacks office and factory efficiency. And—prior to 1910—it lacked organization. It has now had only five years of training in ordinary methods of trade organization.

There has been no effort to create brands, only one or two houses, and those outside of New York, following the example of the manufacturers of men's clothing.

The dealings between the manufacturers and the retailers are full of all kinds of trade abuses: cancellation of orders, unreasonable claims for damages, unjustified discounts, etc.

On top of all these difficulties comes another: It is to be noted that the law of copyright has never yet been applied to fashion. The Paris designer, a student of the compre-

hensive foreign libraries, copies from the ancients. The American designer copies from the Parisian. Just as the lawyer freely quotes from the briefs written by his predecessors (without making any acknowledgment), so the designer of women's wear freely copies without any by-your-leave. This freedom of copying designs has gone to such lengths within the past two decades that it is one of the menacing evils of the industry. To amplify . . . I have given my life to a study of design. . . . I have gone abroad and purchased the Parisian products of the best fashion artists in the world. . . . My bill leaps into the thousands of dollars, both for expenses abroad and such models as I must purchase. . . . I have employed expensive artists here. . . . As the result of their work and mine and the labors of my high-priced sample-making department, I have created something which I believe will appeal to the American woman. . . . Yet I know that within forty-eight hours after the first copy is exhibited in a retail department store, it will be purchased by one of my competitors and copied. I know more. . . . I know that at the corner of Twenty-third Street and Fifth Avenue they are selling in market sketches of such of my designs as can be secretly captured. What protection have I? . . . My only escape is multiplicity and rapidity of design at such frequent intervals that my competitors lag behind me.

But all the garments made in the women's wear in-

dustry are not made for ladies of fashion, you will say. The answer is that all ladies are ladies of fashion. American women are reputed to be the best dressed women in the world. The very large bulk that goes to make up the millions recorded in the census tables is worn by working girls and women. But their tastes, too, are determined by the trend of fashion. The design of the popular-priced garment follows closely in the wake of the finer and more exclusive model. Before the strike of 1910 few of the manufacturers confined themselves wholly to the manufacture of exclusive designs. Nearly all carried a supplemental line of popular-priced goods. But in addition to the high-grade and popular-priced garments, there were quantities and quantities of garments of very cheap quality made for consumption throughout the country. The popular song in New York City to-day will be heard in some Western town three years from now. The sheet of music that now brings its forty or fifty cents in New York will then be sold in the Five and Ten Cent Store. The same spread of the new design takes place with the popular woman's garment.

We are thrown, then, into an industry, broadly speaking, where two elements control—the element of design and the element of cost of production; one group of manufacturers bent upon rapidly executing movements in the direction of high-priced and excellently made garments; another in the direction of producing large

quantities at the lowest possible cost, but none making up stock in quantities in advance of sales. Neither of these trade movements is independent of the other. Each reacts upon the other. In a general way it can be assumed that the cost of material is approximately the same to the manufacturer of high-grade goods as it is to the manufacturer of the popular-priced goods, given the same quality and texture of material. But there is a very marked divergence in overhead charges and cost of labor. The old-fashioned sweatshop operator could successfully compete against the uptown manufacturer, first, because his overhead charges were low—far below the uptown man's, and secondly, because his cost of labor was very much less. His hours of labor were longer and the price of labor was lower. If he had a small shop and fewer people to deal with, he had very much less rent to pay, he made no trips abroad, he bought no designs, employed no mannequins, and was his own designer, salesman, and often his own cutter. Indeed, the biography of many of the big manufacturers of to-day begins as employers at the point where they stopped cutting or pressing garments as employees of others, became "contractors" for some larger employer, then graduated into the employers' group, accumulated capital out of small profits, lived on the most economical scale, and captured the styles of others as freely as their present competitors now capture theirs.

The day of the specialty store, that is, the store where nothing but women's garments is sold, in 1910 had not yet arrived. The retail disposition of women's garments was wholly in the hands of the department stores. The manufacturer was to a great extent at the mercy of the department store management, unless he could produce something of such rare excellence and beauty that the retailer was obliged to come to him. That the department stores had much to do with the copying of styles and the establishment of new manufacturers is not disputed by those who know the trade. The finger is frequently pointed at specific department store owners who in the past made a specialty of buying fine garments from leading manufacturers and then establishing others in business, furnishing them with successful "numbers" to make up for sale at "bargain-counter prices."

Into this industry came a union. Another nuisance to add to the plagues of the manufacturer! Is there any wonder that at first it was ignored, then fought, and only with reluctance accepted as a factor? Then, if, through the union, some order could be brought out of this chaos, hailed with hope! If all paid the same price for the same labor, as all paid for the same merchandise, efficiency as manufacturers would count for something against unscrupulous competitors. If we could be sure that everybody would observe fifty hours a week, pay double pay for overtime, and close up on holidays when we

did, we could readily raise the standards of working conditions. In 1910, at the time of the Brandeis conferences, this was the dominant note on the part of the manufacturers. As stated in Chapter III, the consideration for the great advances given to the workers was the promise of a rational and peaceable method for securing adjustment of future controversies and the equal enforcement of standards and wage conditions throughout the entire industry.* The standards were established. Under the preferential union shop provisions, the union secured almost complete control of the workers. Theoretically, the law of the Protocol was the law of the industry. In the Employers' Association, if a member violated the Protocol, complaint was made by the union and investigation followed. If he underpaid the scale his own books would disclose the evidence; there was no constitutional protection against furnishing self-incriminating evidence. He was obliged to comply with the rules. His first offense would be followed by a warning; his second by a fine, and his third by expulsion. In the non-Association shops the union was (theoretically) in complete control. These were the shops of the closed shop agreements, where the walking delegate was free to enter and where the right to strike was unabridged.

In 1912 something new happened. Manufacturers

* See page 39.

began buying goods from manufacturers. Prior to 1912 a "jobber," so called, was a man who bought job lots of undisposed of garments, either directly from manufacturers or at auction sale, and sold them to retailers for bargain-counter sales. In 1912, 1913, 1914, and 1915 jobbers became more numerous and their annual business mounted into the millions. Manufacturers who had been in the industry for years, who had established splendid organizations, were offered garments, complete and ready for delivery, at prices so far below what they could produce them for in their own shops that they opened their eyes in amazement. This was particularly true of the popular-priced garment. Steadily but certainly the great volume of work, the "bundles" as they are called in the trade, began to go from the "inside" to the "outside" shop. Why manufacture when you can job? By 1913 the matter had become one of grave concern both to the leaders of the union and to the leaders of the manufacturers' association. It was a subject of repeated conference and discussion. The remedy proposed by the union was simple. It was to throw upon the members of the employers' association the burden of maintaining standards in all the shops whose merchandise they bought. From the manufacturers' view-point this meant an inevitable diminution in the membership of the employers' association and an increase in the number of jobbers. There was no law by which a man-

ufacturer could be compelled to remain a manufacturer and a member of the association. What was the explanation for this trade movement? It has been offered by one of the manufacturers:

The cloak industry is not a "capitalistic" industry in the usually accepted meaning of this term; only a few hundred dollars are required to organize a shop. A worker or foreman, having saved the necessary amount, engages in business, and makes up his staff of workers from relatives or friends, immigrants who work under any and all conditions, only too ready to accept employment below union standards. This so-called "social" shop the union is unable to control. The union allegiance in such a shop is naturally weak, and the union officials naturally prefer the easier work of enforcing conditions in the larger shop units. In the "social" shop everything is easy. The boss gets along with his people and there are no "grievances." The union hears of no complaints and on paper everything is lovely. The small shops, therefore, increase in number; new employers spring up over night, and the cost of manufacturing tells the tale to the association employer. The difference in cost of labor cannot be accounted for by the difference in piece prices. It is made up by the opportunity in the "social" shop to work people longer hours, Saturday afternoons, holidays, to cut by piece (instead of upon a week-work basis), to press by piece, and to do many other things forbidden by the Protocol, impossible in the association shop, but quite practicable in the "social" shop.*

If the manufacturers blamed the union for these con-

* Letter of Max Meyer, *New York Times*, July 8, 1915.

ditions, the union, with equal facility, blamed the manufacturers. The reply to the manufacturer by the union was that the conditions existed because skilled workers were discharged at the end of every season and were thus induced to "borrow a little money from their friends and relatives and start a small 'social' shop, or some semblance to it" and that the larger manufacturers "aid these small shops financially, purchase their product or place with them direct orders for goods" and thus "are themselves responsible for the cut-throat competition abounding in the industry."* It will be observed that though each throws the responsibility upon the other, both agree upon the fact of the existence of the evil and the prime and pressing necessity for its elimination. (Obviously, if both are so far agreed, why not a joint remedy?)

It has frequently been assumed that the real cause of the difficulty is the absence of standards for piece rates.† It is true that as to seventy-five per cent of the prices for labor there is no standard, and each garment is separately estimated upon before it can be put into operation. The difficulties inherent in this problem for the shop can be imagined when it is recalled that the success of the high-grade shop is dependent upon the variety of styles it

* Sidelights on the Recent Controversy, *The Ladies' Garment Worker*, September, 1915, p. 8.

† See letter of George W. Alger, *The New Republic*, June 19, 1915, p. 179.

creates. The price of labor is determined in each case by a process of haggling between the representatives of the shop on the so-called "price committee" and the employer. So far as this fixing of piece rates is concerned, it is literally true that the employers deal with two thousand unions instead of with one. In the language of the President of the union:

Prices for one and the same garment varied in every shop. The stronger party at the bargaining invariably prevailed. Our Union controls some two thousand shops in New York; yet it was not the Union that controlled the prices but two thousand separate "unions," each shop acting independently of the other.

This method had a doubly-unfortunate effect on the condition of the trade.*

Though seventy-five per cent of the prices of labor are fixed by this process of haggling, it does not follow that the piece price operation is seventy-five per cent of the labor cost of the product. The difference between the piece rate in one shop and the piece rate in another in the cloak industry could not possibly make for the wide divergence in the wholesale marketing price of the garment. It is the contention of manufacturers who have studied the matter that the marked difference is due to the freedom the non-Association employer enjoys from the exacting conditions of the Protocol. On the other

* B. Schlesinger: Our Recent Struggle and Its Results, *The Ladies' Garment Worker*, September, 1915, p. 16.

hand, there is a very prevalent fear on the part of a considerable number of manufacturers that, just as the specialty shop has in many respects the advantage over the high-priced department store, so the little manufacturer has a natural advantage. As this chapter is being written, a Philadelphia manufacturer is reported to express the fear that "in five years the large cloak and suit shops will have disappeared" and bases this prediction upon his belief that "the manufacturer, by giving his work out, can have it done much cheaper than he can do it himself with high-priced cutters and other more expensive employees and heavier overhead expenses, rent," etc. "The time is coming," he says, "when they will cease manufacturing in their own plants, give the work out, and become jobbers." *

In a study of the problem of standardizing piece rates in the dress and waist industry,† now published as Bulletin 146 of the United States Department of Labor, Bureau of Labor Statistics, very much the same problem is disclosed. The director of the investigation states:

The chief difficulty with a piece-rate schedule for the making of garments is in finding a satisfactory basis that will meet the varying conditions under which the prod-

* See *Women's Wear*, September 18, 1915, under heading "Coats and Suits."

† Made by Dr. N. I. Stone.

ucts of the garment industry are made. Styles of garments change very radically, and the amount of work necessary to produce two garments selling at the same price may differ one hundred per cent, and sometimes a great deal more. In one case there will be comparatively little labor and finer material, and more or better trimmings. In the other case there will be relatively more labor with a consequent saving in the cost of material and trimmings.*

Again:

A scale of rates paid in shops in which efficiency is the keynote, in which the operator is able to work steadily through the day without waste of time, with up-to-date machinery and appliances, and amid sanitary surroundings, may be fully adequate to enable the workers to earn good wages in that shop. The same schedule of piece rates may prove totally inadequate for operators of equal skill working in a shop where lack of system on the part of the management results in frequent interruptions and stoppages of work. . . .†

It may be that the small shop is economically the more efficient unit for the manufacture of the popular-priced garment and that instead of its being regarded as an outlaw to be dealt with summarily, it should be legitimized and regulated.

I am not here attempting a complete analysis of this

* Bulletin 146, Bureau of Labor Statistics, Department of Labor, p. 193.

† Bulletin 146, p. 293.

technical problem of the industry. It is a problem that sooner or later must be thoroughly studied and solved. I have presented it, however, with sufficient concreteness to give to the student or the casual reader some picture of the business difficulties inherent in the running of this industry. Now, add to the business difficulties the high-strung temperament of the workers on both sides—I mean, of course, to include the “boss” as well as the operators—and it becomes apparent that to bring law and order into this industry was to make the attempt in perhaps the most difficult and most handicapped of all the young industries. Compare this industry with industries where large plants are required, large investments of capital are necessary before there can be a beginning. Take the steel, the coal, any of the mining industries, for example. The problem is obviously much simpler.

The Protocol undertook to better industrial conditions by rational and peaceable methods. Upon the sanitary side it succeeded. Upon the business side, while it did not wholly fail, it did not meet the expectations of those who framed it. The hope of the decent manufacturer in 1910 that the Protocol would make the high-grade manufacturer's position more certain has not yet matured. Under the rigorous enforcement of standards by the Association of which he is a member, he is obliged to observe standards while his competitor outside of the

Association runs the risk only of the occasional strike. What then? Shall we go back to the anarchy of 1909?

Beginning with 1913, as we shall see, the strain upon the officers on both sides became so great that it broke them down.

CHAPTER IX

THE CRISIS OF 1913

THE failure to bring about equality of standards in the industry developed an anti-Protocol party within the ranks of the manufacturers. Just as the business man blames the national administration in power for bad business conditions, so the business men in the industry cast upon the Protocol entire responsibility for all their business troubles.

In the union ranks, a stronger anti-Protocol party flourished. Remember, the Protocol had not promised the millennium, but it had been very much over-praised. Too much had been promised in advance and the trumpets of victory had sounded too long after the march was over. The feeling that the employers had been whipped into submission was freely encouraged. The Protocol was in truth a successful outcome for the union; but it was far from a defeat for the employers. The policy implicit in the Protocol, the spirit back of its institutions, the peace methods—all these were without meaning, indeed, had not been translated over to the great masses of the working people. The process of educating them to its true value had not yet been devised, and the hand-

ful of men in the union who understood its philosophy felt genuinely that time and experience were the only true processes of education. There were, in addition, outside influences at work.

You cannot build up a working creed for ten years and then suddenly throw it to the winds. The employers were the enemies of the workers. Each belonged to a separate class. There could be no peace between them. There must be eternal warfare. The *klassenkampf* was here, right here in the cloak industry. The Protocol? Yes, it was a temporary truce to give us more power with which ultimately to smite the employer and so triumph over the whole capitalistic tribe. Our employers are our masters, we are poor slaves. Does the Protocol say you cannot strike? Then a plague upon it; you are "slaves of the Protocol."

Two groups developed within the union itself; one, the men who had spent their lives in sacrifice for the working people and who regarded the Protocol as a great advance, who knew from actual experience the inutility of the strike and the ineffectiveness of violence, who, to meet the pressing and obvious needs of to-day, studied existing business factors and tried to meet them squarely and looked to a better order of society, yes, Socialism itself, as an ultimate but far distant goal to be reached only after years of slow preparation in which the Protocol itself might play a part. These were the *Con-*

servatives. The other group were—shall we call them?—the *Impatients*. Quite opposed to all the methods, the institutions, the philosophy of the parliamentarians or the jurists, they saw in all their schemes and plans nothing but spiders' webs in which to ensnare them, and who, genuinely enough, believed that the joinder of the leaders of the union with the leaders of the employers' association in a common task was, so far as the union leaders were concerned, a traitorous surrender of their class and a betrayal of vital principles. How can you dine with your enemy? How make agreements with him that you must keep? You are but postponing the Great Day of our Triumph. You sold our precious birthright when you bade us keep forever to a system of arbitration! By such a process you have weakened the cause of labor.

So ran the song. The journal of the International body was *The Ladies' Garment Worker*. The journal of the Joint Board was the *New Post*. The Joint Board represented the Cloakmakers' Union of New York City. The International was the parent body for all the cloakmakers' locals the country over. Between the editor of the *New Post* (supported by the Joint Board) and the editor of the *Garment Worker* developed a sharp journalistic controversy, with the advantage to the *New Post* that the latter, a cheap weekly, reached practically every member of the union, while the former, published monthly, reached only a comparative few. Here are

illustrations of the manner of debate and the points in controversy: In January, 1913, the *Garment Worker* contained the following editorial (p. 13):

A Word with Our "Irreconcilables"

We have had occasion more than once to refer to the discontented and irreconcilable element in our organization. Every organization has this element. By their discontent with prevailing conditions they often do a useful service. By clamoring for more than we have they only illustrate a law of human progress. But at times this element becomes dangerous, particularly when they fall into the hands of demagogues, who in order to maintain their position in the organization, pander to their prejudices, stir up discontent, and magnify it, and try to force the organization to demand from the employer the impossible. . . .

In the *Garment Worker* for November, 1912, under the heading of "Everything or Nothing," after referring to the difficulties which the union had experienced in the past in organizing the workers of the trade, in that "our people insisted upon either getting everything they desired in a union shop, or no union shop at all," and observing that "it is impossible to achieve all that we want, the best we can get is some kind of a suitable compromise for which our people would not stand," the editor continues: "The result was that in the past we got *nothing*." He finds that the success of the general

strike of 1910 came from the fact that "our people were wise enough to accept what we considered to be a suitable compromise" and points out with pride that "after two years the Organization is much stronger and on a more solid footing than it was two years ago." He then prophesies that "success in the future will largely depend upon our ability to accept a part of what we demand and keep on clamoring for more." The "old story of either 'everything or nothing'" being revived, he complains: "We have been told lately that unless the union will get all that is coming to us, . . . the union will remain a 'comedy and a fraud.' . . . we have pointed out on several occasions the danger of urging . . . what is physically impossible to get. *It has been our weakness in the past to promise our people more than it was possible to get for them.*" He refers to the then pending agitation against the Protocol as "a pernicious and dangerous form of agitation and if successful will lead to the destruction of the Union. Especially in a trade like ours, with such a huge immigration, with so many garment workers outside of it, working under much inferior conditions, . . . leakages of either one form or another" are bound to occur ". . . to carry on an agitation amongst our people, that unless we can stop all leakages the union is worthless, is practically the worst thing which can be done, especially when this agitation is carried on by responsible officers of the union."

In reciting the history of this agitation in his report to the International Ladies' Garment Workers' Union in the Cleveland Convention, June, 1914, the President said that "a crusade was started against the Protocol . . . and against those who ventured to hold that the Protocol had brought to the cloakmakers improvements and advantages. All sorts of grievances against the Association were unearthed. Every petty case that a business agent with common sense could easily settle was made into a general issue."

As we shall see later, this agitation brought to a focus in 1915 the so-called "discharge issue." The foresight of the union President in issuing the warning is apparent from the following quotation:

A hue and cry was raised that all active union men were being discharged, notwithstanding the evidence afforded by the records that in three years less than five hundred employees had been discharged, and of these a large number were reinstated. Such exaggerated reports were persistently spread until belief in their veracity became almost general.*

The description of the President of the attacks upon the manufacturers in the official organ of the Joint Board is significant.

. . . the official organ of the Joint Board, on the one

* Report and Proceedings—Twelfth Convention of the International Ladies' Garment Workers' Union, p. 16.

hand, attacked the manufacturers, and, on the other, published Industrialist and Syndicalist articles, emphasizing the workers' abstract rights and declaring them to be justified, even when they are glaringly unjustified.*

He refers to the fact that this agitation had "inflamed the minds of the cloakmakers, who for the last two years have had bad seasons and very little work" and that several times the officers of the International had brought to the attention of the Joint Board "that it was not a question of justice and rights in the abstract, but rather one of possibility of achievement." He says: "being irritable and disappointed by reason of troubles and difficulties for which the Union was not responsible, the workers' minds were not open to logic and reason, especially when the logic and reason came from the international officers, who are widely known for their conservatism and moderation." †

Here, then, we have conflict between the experienced leaders who went through the strike of 1910 and the newer element in the union, who were at once seeking to overthrow the Conservatives and the Protocol. Contests of this sort are usual in political affairs and are accepted as part of the process of education by which men arrive at sound policies. But while this conflict of opinion was

* Report and Proceedings—Twelfth Convention of the International Ladies' Garment Workers' Union, p. 16.

† *Id.*

raging within the union, the industry was suffering. The Chief Clerk for the employers' association once made up a chart which showed the direct effect upon the temperature of the industry of this difficulty in the blood. The more heated the debate, the more frequent the shop strikes. In other words, the more articles were written against the Protocol, read by the workers, the greater the difficulty of preserving order in the industry.

By January, 1913, the fever reached its height. A certain shop broke the law and went on strike. Upon appeal to the Chief Clerk for the union, the manufacturers received no relief and when the Chief Clerk was informed that an appeal would be made to the International, he disputed the power of the national body to intervene. In effect he said that the "Joint Board was the substance of the union and the International the shadow." He was not so far wrong as a statement of the fact, but as a statement of the legal responsibility of the International he was in error. By February, 1913, the Board of Arbitration had decided that the International was responsible for the preservation of order in the industry and for the observance of its contracts by the Joint Board.

In September, 1913, another strike occurred in an Association shop. On appeal to the Chief Clerk no relief was secured. Soon the strikers were found picketing the shop, though the union had not authorized any strike.

The Chief Clerk for the union defended both the strike and the picketing. Upon appeal to the International, the International found itself unable to abate the strike. Again the Association appealed to the Board of Arbitration. That Board sat for two days, October 3d and 4th, 1913, reviewed the entire history of the transactions during 1912 and 1913, rebuked the Chief Clerk of the Joint Board for his conduct, rebuked the International officers for failing to intervene, made strong admonition to both parties that law and order must be maintained under the Protocol, and admonished the union with reference to the articles that appeared attacking the Protocol, that this kind of "miseducation" must cease. After this utterance from the Board of Arbitration the Association felt called upon, in a communication to the union, to review the decision of the Board made the previous February and to bring the seriousness of the situation to the attention of the International. In this communication the Association said

The situation is a most critical one. The conditions disclosed by the record presented to the Board of Arbitration in February last have become more aggravated during the past eight months. There has been a complete breaking down of that relationship of "mutual respect and confidence," which the Board of Arbitration says is essential to the life of the Protocol, and there has been not only a complete failure to educate the members of your Union to an understanding of the difficulties of

the problem presented, but, through the columns of the *Neue Post* and through the work of some of the representatives of the Joint Board, there has been (as the Board of Arbitration now finds) a campaign of "miseducation."

We must now—after three years of experience with the Protocol—call upon you for direct and specific answers to the following questions:

First. Does the International Ladies' Garment Workers' Union accept the interpretation of its relationship to the Protocol as laid down by the Board of Arbitration?

Second. Does it accept the obligations imposed upon the parties to the Protocol as laid down by the Board of Arbitration specifically with reference to

(a) The conduct of the Grievance Board;

(b) The conduct of the representatives of the Union who deal directly with the Association;

(c) The use of the columns of the *Neue Post* and other organs reaching the members of the Union?

Third. Does the International accept the decision made by the Board of Arbitration, that while the power resides in either party to the Protocol to abrogate it, that it does not lie in either side to suspend its operations, and that "picketing" and calling men "scabs" and "strike breakers," and suffering local shop strikes, must cease, and that the entire power of the Joint Board and the International must be used to discipline the members and prevent the recurrence of such situations?

Fourth. Has the International the power actually to do the things it has undertaken to do?

Fifth. Is it willing, if it has the power?

Upon your answer to these questions depends, in our judgment, the continuance of the Protocol as a working instrument between us.

As this letter is sent by direction of the Executive

Committee of the Association, we must ask you for an answer that is approved by the General Executive Board of your organization.

At this time the Association had no idea of breaking off relations with the union. It sought merely to secure the carrying on of the institutions created by the Protocol. The communication, however, was seized upon by the then Chief Clerk of the union and his adherents as the basis for further agitation against the Protocol. The entire anti-Protocol sentiment in the union rallied about the Chief Clerk as its leader, until, on the 16th of December, 1913, the Association was obliged to write the union:

We are informed that Dr. Hourwich is to continue to represent the Joint Board in their dealings with our Association under the Protocol. We regret to be obliged to ask you to designate someone else with whom we may have official relations. Dr. Hourwich has publicly charged our Association with having offered him an inducement to work for the Association; has publicly charged us with having connived to warp the statistical inquiry of the Board of Arbitration; has attacked the good faith of our Association, the Board of Arbitration, the Board of Grievances, your International Officers and your Joint Board, and stated in the presence of the Board of Arbitration that, in view of its recent decisions, he could not work in harmony either with the Board or with us. We recognize fully the right of each party to the Protocol freely to select its own agents, but since it is of the essence of the Protocol that there shall be mutual

respect in the daily dealings of the parties, it is obvious that neither party can have dealings with a representative of the other, whose deliberate purpose it is to create distrust and ultimately destroy the Protocol. Since we desire fully to perform our part of the duty of upholding the Protocol and abiding by the decisions of the Board of Arbitration, we prefer not to be obliged to deal with one who has both insulted us and assumed an attitude of dictatorship in the industry.

We regret exceedingly, therefore, to be obliged to ask you to designate someone with whom we may continue business relations, so that the daily business may be conducted without friction.

Copies of this communication having been sent to the International Union, it sought the advice of leading trades unionists of the entire country, including Samuel Gompers and John Mitchell, and after careful review of the entire situation they advised the International Union to withdraw its guarantee of the Protocol unless the local board removed the then Chief Clerk.

On the 7th of January, 1914, the International officers wrote the manufacturers as follows, in response to their demand that the Protocol be enforced:

. . . you are well acquainted with our opinion as to the fitness of Dr. Hourwich as mediator and conciliator. . . .

With our best intentions to continue the Protocol, we must admit that at this time we are powerless to take a hand in this controversy. . . .

To this the Association replied:

The Clerks of the Board of Grievances are, as you know, officers of the Board of Grievances, who must follow and obey decisions of the Board of Arbitration, who must be mediators and conciliators, and must, of necessity, work together. It seems to us, not as a matter of personality, but as a matter of principle involving the very life of the Protocol, that either side has the right to call the attention of the other to the actual fact that one of the Clerks is an impossible person in the situation.

Under the advice of Messrs. Gompers, Mitchell and other leading trade unionists, the General Executive Board of the International adopted a resolution recognizing the decision of the Board of Arbitration of the previous February to the effect that the International was guarantor for the Joint Board in its dealings with the manufacturers' association, and that under the decision of the Board of Arbitration of October the guarantee implied joint responsibility and joint coöperation of the officers of the International Union with representatives of the Joint Board in carrying out the provisions of the Protocol and

WHEREAS, The present Chief Clerk, Dr. Hourwich, who since he attached his signature to this arrangement made by the Joint Board of Arbitration has persistently and systematically attacked the policies of the International Union and openly denounced its officers as the agents of the Manufacturers' Association and has in

every way tried to discredit them before our members and thus brought about a condition of affairs whereby he has made it impossible for the International officers to work in coöperation and harmony with him; and

WHEREAS, His policies are radically and fundamentally opposed to the policies and methods heretofore pursued by the International officers; and

WHEREAS, It is the firm belief of the G. E. B. that the methods pursued by Dr. Hourwich are detrimental to the best interests of the members of our organization; therefore, be it

RESOLVED, That the Joint Board of the Cloak and Skirt Makers' Unions be informed that under the clerkship and guidance of Dr. Hourwich the International Union cannot remain the guarantor for the Protocol.

The adoption of these resolutions for the time being only increased the storm. It hailed epithets and rained slander. The East Side press was in all the glory of a strike campaign, though no strike had actually been called. One daily set itself out to discredit another. Through it all the learned doctor's controversial skill was the wonder of the day. He was the natural hero of the irreconcilables. He laid the President of the International low, he laid its Secretary low, he drove out the lawyer for the International. These were the three men who in 1910 were hailed as demi-gods by the cloakmakers and carried upon their shoulders in triumph.

The Federal Commission on Industrial Relations, studying collective bargaining in practice, came to the

city and held public hearings in the City Hall, and came to the conclusion that the Protocol had brought great good to the industry. For weeks the industry was on the verge of a strike. Everyone interested trembled lest 1910 be repeated and there be a relapse into anarchy. The industry lay like a sick patient tossing about, while the doctors disputed and argued. Finally, the Board of Arbitration held a session (January 11, 1914). After hearing and conferring with the three parties—the manufacturers, the Joint Board, and the International officers—and having been advised by the manufacturers that they intended to give notice of the termination of the Protocol, the Board publicly announced that the Chief Clerk could avert “the certainty of great suffering for tens of thousands of men, women and children” by withdrawing from the situation. Its recommendation of a truce of eight days was accepted by both parties, and before the eight days had expired the Chief Clerk resigned.

Six months later, at the Convention in Cleveland of the International Union, where every local in the country was represented, the matter was thoroughly thrashed out. The International officers were fully supported in their action by the vote of the convention. The resolutions are important:

WHEREAS, Dr. Hourwich together with some irresponsible persons carried on an agitation against the

officers of the International Union, accusing them of treason and of being agents of the Cloak Manufacturers' Association, because at their Quarterly Meeting held on December 20, 1913, they decided to inform the Joint Board, its affiliated locals and its members that "under the clerkship and guidance of Dr. Hourwich, the International Union cannot remain the guarantor for the Protocol" and because of this decision Dr. Hourwich and the said persons accused the International officers of having helped the manufacturers in an alleged attempt to dictate to the Union who its representatives shall be, and

WHEREAS, From the evidence and statements presented at this convention the delegates are convinced that Dr. Hourwich has for some time prior to the date of the receipt of the said letter done everything in his power to provoke strife, dissension and ill will both inside the organization, between the members and the officers, as well as outside the organization, between the Manufacturers' Association and the Union and that he further tried to induce the Cloak Makers' Union of New York to abrogate the Protocol and, after having utterly failed in his attempts, he assumed an attitude and pursued a policy in his dealings with the manufacturers, calculated to provoke them and compel them to take the initiative to abrogate the Protocol and has raised the fictitious issue that the manufacturers' association tried to dictate to the Union who its representatives shall be and thereby brought about a condition of affairs which made a conflict between the Union and the Association almost inevitable, and

WHEREAS, It is the judgment of the delegates to this convention that to undertake a fight with employers because of Dr. Hourwich would have been a senseless act

of folly and a crime against the interest and welfare of the workers engaged in the cloak trade in particular and against the International Union in general, therefore be it

RESOLVED, That the delegates to this Twelfth Convention go on record as expressing their approval of the action of the General Executive Board for having through their efforts succeeded in restraining and preventing the Cloak and Skirt Makers' Unions from entering into an unnecessary, unwarranted and useless fight with the Manufacturers' Protective Association and congratulates the entire membership because the International officers were able to maintain the integrity of the International Union so that it can carry on in the future the work of solidifying the rank and file of our workers and thereby promote their interest under the authority of the International Ladies' Garment Workers' Union.*

In addition, the convention went on record as deciding unanimously:

That until some other form of agreement has been presented to us which will better safeguard and protect the interests and welfare of our members we are in favor of the Protocol agreement.†

Sufficient time has elapsed to review the crisis of 1913 and to make some deductions therefrom in the light of the experience. The Chief Clerk of the union, around whom centered the storm, was a man of fine intellect,

* Report and Proceedings, Twelfth Convention of the International Ladies' Garment Workers' Union, p. 204.

† *Id.*, p. 182.

broad culture, a lawyer, a statistician, an economist, a journalist of international repute, and it was common knowledge that he did not in fact accept the philosophy of the anti-Protocolists. He believed in the Protocol and believed in it as an instrument for preserving law and order. He conceived of it, however, as substituting in place of the strike and lockout a system of industrial courts in which all controversial matters could be disposed of, with a lawyer fighting the cause of principals, case by case. He believed that the existing institutions were inadequate. The Board of Arbitration, as he saw it, had failed fully to supply a medium for litigation. The Board of Grievances, evenly balanced in number, was to his mind always subject to deadlock and consequently could not function properly, and in the immediate contact between the two Chief Clerks he saw not an opportunity for the exercise of great diplomacy and conciliation, but a matching of wit and skill and the pitting of the power of one organization against the other. He was, indeed, ready to join in revising the constitution of the industry by installing what to him seemed to be a more complete system of judicature. The real agitation against the Protocol had begun long before his arrival in New York. He became, however, the natural leader of the anti-Protocolists in the union. In emphasizing the judicature points in the Protocol problem, he made the mistake that others have made of

ignoring the fundamental business factors in the industry, and in addition accepted the theory of continuous antagonism of interest between the workers and the manufacturers as a working hypothesis. In endeavoring to make the juridical and parliamentary methods cover the daily running of factories, he had failed to learn the lessons which the breaking down of such systems in political life, when applied to similar problems, had taught both laymen and lawyers. Of course, in his theory of the justifiable shop strike and picketing he was utterly unsound, and when this theory came up for analytical examination by the Board of Arbitration it was easily shattered. Indeed, the basis for the Board's decision on this phase of Protocol law was to be found in the precedent established by the doctor himself. Upon a previous occasion when the shop strike fever broke and abatement of the strikes could not be readily secured, after repeated demands, the President of the Employers' Association issued an order to the clerks of the Association that none of them should attend to any grievances until the shop strikes were abated. The Chief Clerk for the union (the doctor himself) charged the President with having taken the law in his own hands, and since the Protocol was to establish law and order this was an offense. The Board of Arbitration sustained the doctor and rebuked the President of the Employers' Association. In substance they said: "You

believed you were justified and we can understand how you were aggravated, but we must emphasize that so long as the Protocol is in existence neither side must take the law into its own hands. While either party may terminate the Protocol at any time, until it is terminated it is the law of the industry and neither party may suspend its operation." This point scored by the doctor against the employers was turned upon him when, in effect, he suspended the Protocol in suffering and defending shop strikes.

Comparing now the trying experiences of 1913 with the two other experiences we have studied—the Board of Sanitary Control and the Chicago clothing situation—we observe the following facts in the New York experience:

The absence of uniform, rational, coöperative movement—the very essence of success in the Board of Sanitary Control and Chicago experiences. We find a failure to take complete measure of the business factors in the industry. We find a definite and organized opposition within the ranks of one of the parties against the scheme itself. We find that though the leaders of the International have profited by experience, their lessons had not yet sunk into the minds of their constituents. There had been a complete failure to educate the workers to the meaning of the Protocol, and as a final result the officers of experience, indeed, the men who had brought

We may say, upon the basis of this study, that Hypotheses I and II which we suggested in Chapter VII are fully sustained by the New York experience.

On the other hand, when we examine with care the proceedings of the International Convention in the succeeding June, we find that after six months of reflection and discussion the conservative representatives of the union are sustained and the convention denounces all those who were guilty of raising false issues and who sought "to provoke them (the manufacturers) . . . to abrogate the Protocol." There is progress toward an understanding and realization of the value of the institutions, but a process of education fearfully expensive to the industry itself. To destroy the tendency towards Syndicalism in the industry brought the industry to the very brink of a strike, resulted in eliminating from the situation men who had enjoyed confidence as leaders of the entire union, who themselves possessed a fund of valuable practical knowledge and experience. Apparently, the rule of progress is three steps forward, then two back, and a fresh start all over again. The Board of Arbitration wholly justifies itself as an existing institution. It focuses attention upon error, and though it is without power to enforce its decisions, it remedies by applying clear reason to confusion. Yet if there had been no publicity, no intervention of national labor leaders, no hearings before the Industrial Relations

Commission, the Board of Arbitration itself would have fallen. The Protocol proves its tenacity in times of great crises. As we shall see, though it was terminated in 1915 when another crisis arose, it came into immediate being again; and though the failures are known in more or less complete detail to employers and local unions in Boston, Philadelphia and Chicago, Protocol institutions are established in these cities, the language of the instrument itself is copied almost verbatim, and its plan is carried over to four or five other branches of the needle industries. Indeed, as this chapter is written,* Chicago cloak manufacturers are following the example of New York, and Boston is renewing its agreement, utilizing the latest experience of its sister city in the East.

In short, when both are brought to the brink of disruption and are face to face with the possibility of reversion to the anarchical conditions preceding 1910, they accept the principle that the methods of Law and Order are after all best for securing Justice and Welfare. Between crises, however, we find a lack of that fiber and discipline necessary to the daily observance of law and order. There is no police department and no sheriff. Public opinion comes into play only when there is an acute situation. The lessons of self-government are learned through suffering, and the training of the people interested is at the expense of the industry itself. The

* September, 1915.

student of municipal reform—indeed, the student of democratic institutions generally—will find in the failures of this industrial development much of similarity to the failures of democratic government generally.

CHAPTER X

1914—THE COMMITTEE ON IMMEDIATE ACTION

ON the union side the men who carried upon their shoulders the heavy problems of the workers, gave their entire time to the work. It was their business. On the employers' side, however, the leaders were men whose time was devoted primarily to the management of the single-headed institutions described in Chapter VIII. This voluntary contribution of service by employers in an industry of such strain had its limitations. The men who in 1910 were propelled forward by their vision and faith, made unusual sacrifices. It could not last. One of the expensive results of the crisis of 1913 was the departing from activity on both sides of leaders who had had experience in dealing with each other. With these men went a fund of knowledge and a background purchased at the expense of great energy. Human memory is a slate on which the chalk marks rub out all too easily; only those lessons engraved with hot and sharp needles of suffering remain. New leaders bring new vitality, and if they utilize and value the experiences of their seniors in service and have some reverence for the lessons of the past, they can do much to move

things forward; but if, with the enthusiasm of youth, they throw overboard the accumulated experience and wisdom of years and resolve to get all things new and fresh for themselves, they will but make the age-old blunder of Aladdin's wife. There is not much difference in outward semblance between tablets of bicarbonate of soda and bichloride of mercury. The inexperienced may easily take one in place of the other. Why is education so costly? Why do we not learn by others' experience? Dr. Dewey, in "Schools of To-morrow," believes that this is the only true process of education. "Learn by doing." It is one of the striking features of the New York experience that education on both sides is acquired by the expensive repetition of failures.

Following the resignation of the doctor, the Board of Arbitration, taking into account the feelings and sentiments on both sides, and the strain upon employers of work upon the Board of Grievances, offered as an experiment the device of the "Committee on Immediate Action." There had been much cry of deadlocks arising from the evenly-balanced constituency of the Board of Grievances, and though the fear proved, upon subsequent examination,* to be wholly unfounded, it did in fact create distrust and seemed upon the surface to have some basis. With some hesitancy and as an experiment,

* See Bulletin 144, Bureau of Labor Statistics, U. S. Department of Labor.

the Board of Arbitration adopted the following rule under which this new Protocol piece of machinery was created:

30. *Committee on Immediate Action.* If the chief clerks shall, after due effort to conciliate, fail to agree in any case arising under the Protocol, they shall, together with a third impartial person (chosen hereunder by both parties) constitute a committee on immediate action, which committee shall decide all matters submitted by the chief clerks, except such matters as involve Protocol law.

The committee on immediate action shall, in all instances, aid in the work of mediating and conciliating and in the enforcement of decisions made.

Either party may appeal to the board of arbitration, direct from any award made by said committee on immediate action, but the award shall stand pending the determination of the appeal.

But the committee on immediate action shall in no case take up the complaint of the workers wherein a stoppage of work exists until those stopping work shall have returned to work.

31. The parties shall immediately agree upon the third impartial person provided for in the preceding rule. In case the parties shall be unable to agree upon such third impartial person, he shall be selected by a committee consisting of the following:

- (a) The president of the American Federation of Labor.
- (b) The head of the Political Science Department of Columbia University.

- (c) The chairman of the Committee on Arbitration of the Chamber of Commerce of the State of New York.

The person so selected shall receive adequate compensation, to be borne equally by both parties.

32. Each of the parties shall designate its own chief clerk, who shall have power to designate a first deputy. Each chief clerk shall have power to request his first deputy to act for him as a member of the committee on immediate action, if circumstances prevent his personal attendance.*

This machine worked as it was expected to work. During the following year, through the work of the committee, ordinary situations were handled with expedition and with good result, and to those fundamental issues that had been latent in the situation for some time the Committee on Immediate Action acted like a poultice plaster—it brought the inflammation to the surface. Whether this was good or bad or timely, remains to be determined. Under the rule, though the committee is, in theory, a trial board of *three*, two of the members are frankly partisans; indeed, act at once as advocates and as judges. In case of deadlock, therefore, the burden of final decision falls upon the single chairman. It was carefully provided that this committee had no power to make Protocol law. Its power was limited to deciding controverted questions of fact. It was during the existence of the Committee on Immediate Action that the “discharge issue,” so called, arose and brought about the experiences of 1914 and 1915. These experiences were pregnant with lessons for the participants. Perhaps recital of them will help others

* Proceedings of the Board of Arbitration, Jan. 24, 1914.

CHAPTER XI

HIRING AND DISCHARGING

"Now I shall lose my job" was the first exclamation from an unconscious workman carried out of a subway cave-in to a neighboring place of relief. The impulse to retain the place which provides a means of support is an impulse strong enough to make reason and judgment give way before it. For the man with wife and child dependent upon his earnings to philosophize concerning the alternate effectiveness of parliamentary and juridical methods as compared with anarchy is difficult. The burning thought in mind is "How shall my wife and child be fed?" Contact with daily situations on the part of the social reformer creates a natural impatience with existing conditions. With more than enough to go round in the world and with many overfed, starving people are to be found wherever one turns. This impulse for security of tenure took on acute form in the cloak industry. Small wonder, when we bear in mind the characteristic temper of the people engaged in it—great ambition, nervous worry, and a keen desire for better things generally. The impulse for security of tenure is not limited to the day or week worker. We know

perfectly well that it operates in everyone who works and lives by his labor. The civil service employee, who never feels certain that his salary will not, in the interest of public economy, be cut or his position wholly abolished; the doctor, the lawyer, the literary man whose income is not within his control, dependent very considerably on chance; and the minister, who never knows when devotion to principle will find, in his expression of views not entirely consistent with the notions of his congregation, the necessity for decision between maintaining self-respect and maintaining a position. Nor will any but those ignorant of business conditions assume that the average employer is free from the worry, where entire savings are locked up in business at the risk of financial panic, bank or market slump; and if for security there be investment in real estate or stock and bonds, let those who know the effect of the present war upon both income and values speak upon the precariousness of returns from such holdings. The bankruptcy court tells abundantly the tale of the rich man grown poor overnight, rarely by his own fault. The larger the business, the greater the liabilities and the greater the risk at which the assets are held. Like the colleges, we should all like to be amply endowed, for service free from financial worry.

Uncertainty of income, insecurity of reward for service and relative impermanence of employment is to

those who are dependent upon their work for their living, something always in front of the eyes. Yet as industry is conducted to-day and likely to be conducted for some time to come, security of tenure and certainty of income must be for hundreds of thousands only a distant aim. It is a rare enterprise which can fix definitely the number of people which it can employ from year to year and provide continuous employment for them. In an industry so seasonal in character as the manufacture of women's wear, so fluctuating in the demands, it is one of the cruel business factors that large numbers of people must constantly be taken on and laid off. No business in this industry could stand the strain of supporting the peak-load for the entire year.

But there is another phase of this unemployment problem. Quite apart from the incidents of casualty of employment due to the seasonal nature of the business is the necessary unemployment arising from demands for new and greater efficiency in the work. In the study of the needs of the industry for better industrial training, the United States Department of Labor concludes: "The industry faces the possibility of reaching the upper limits of development at an early date unless a supply of better-trained workers can be assured." * This con-

* Bulletin 147, Bureau of Labor Statistics, Department of Labor, p. 181.

clusion is so important that I have ventured to quote it in full in a footnote.*

* What the industry needs is a new class of workers—designers, cutters, tailors, etc.—who are able not only to adjust themselves to rapidly changing styles and turn readily and skillfully from the construction of one kind of garment to another, but also to originate and execute new ideas.

A second and equally important need is for workers possessing a higher degree of artistic temperament and appreciation, since the possession of the artistic quality of style means the difference between success and failure. The decision as to the lines of a garment is too often left to men who have no conception of the rules of design or the principles of art; the responsibility for choosing and adapting color schemes is frequently intrusted to those who lack even a rudimentary understanding of color harmony; and the details of ornamentation are often worked out with no more intelligence and esthetic appreciation than is required to manipulate a patchwork puzzle. Too much reliance is placed on rules of thumb and formulas whose meaning and derivation are quite beyond the comprehension of those who resort to them.

The obvious remedy, and the only remedy, for these conditions is more and better training for the workers. The requisite skill in workmanship, artistic appreciation, and creative ability can be secured in no other way. It is equally obvious that very little can be accomplished in these directions by attempting to transform adult workers. Something can be done that is worth while, perhaps, but the hope of the industry is in the training of younger workers than those who constitute the vast majority in this industry. An effort must be made to find all those who are still young enough to be susceptible to the influence of training and to concentrate attention upon them.

The industry has undergone a significant evolution during the past 10 or 15 years, because of the tremendous increase in the demand for ready-made garments. The perfection of manufacturing processes, the development of factory organization, and the economies of large scale production have now made available for the great mass of the people garments of quality and serviceability that 25 years ago were within the reach of only the wealthy. It is very difficult to realize the enormous expansion in the volume of business that has taken place in recent years. The ready-made garment made its first appeal to the wearer of cheap clothing, and the product was inferior to that of the custom tailor

The demand of the industry for workers of a higher and better training is one of its immediately crying needs, and it is obvious that to meet this requirement there is inevitable a constant elimination of lesser-trained for better-trained workers. "Very little can be accomplished in these directions by attempting to transform adult workers" is the verdict of the expert for the government.

Now, turn to the other side. The underlying feeling, if not principle, of union organization is solidarity. Its rallying cry is "All for one and one for all." Through it it has built up its membership. The very *raison d'être* of its existence is that it is organized for the protection of even the poorest of its members. It must be against

both in materials and workmanship. With the development of the industry, however, the manufacturer has not only improved his product but he has steadily striven for higher and higher classes of customers. Some of the best designers and mechanics in the business are now in the employ of the better-grade cloak and suit manufacturers. The product of some of these factories contains materials of as high quality as the market affords, and the operatives who make the garments represent skill of as high grade as any at the command of the custom tailor. Since the differences in quality of material and workmanship have been so largely done away with, practically the only things that the custom tailor can supply his patron that can not be had from the manufacturer of ready-made garments are a certain exclusiveness and a kind of personal service. Even the advantage of exclusiveness is of short duration, in many cases, for the enterprising designer readily and promptly copies new ideas that give promise of becoming popular.

This invasion of the field of the medium and high-priced garment, however, has created a real demand for workers with higher degrees of skill, and more of them. The industry faces the possibility of reaching the upper limits of development at an early date unless a supply of better-trained workers can be assured.

the creation of any "aristocracy" in the industry among its members. This, though it accepts a minimum scale, recognizes fully that higher-skilled workers will receive a higher rate of pay, accepts a piece-rate basis in which compensation is affected by differences in skill and reward. Indeed, the Protocol freely recognized and adopted this principle of discrimination among workers and freedom of selection on the basis of skill. Linked in the same paragraph with the preferential union shop is the provision that "since there are differences in degrees of skill among those employed in the trade, employers shall have freedom of selection as between one union man and another, and shall not be confined to any list, nor bound to follow any prescribed order whatever."

In addition is the factor of shop discipline. Before the days of the trades union, shop discipline was maintained through government by the employer. He was the general of the army. His was the voice that decided. The abuse of the power he held imperiously led ultimately to the organization of the trades union. Suddenly he finds confronting him a vigorous, militant organization of working people. He cannot, in theory, question the right of his workers to organize and deal with him collectively. He cannot question the right of all the workers in the industry to organize. He himself organizes with other employers. He cannot question the right of these

organizations to work to raise the standards of living conditions for the workers, and he must freely concede the great good such organizations have done. But the discipline of the factory must still be maintained. The raising of standards and providing for machinery for redressing grievances has not obviated the necessity of *esprit de corps* in the factory. No factory can be run without it. In the old days the employer got the discipline either through winning over the workers to a sense of personal loyalty to him or by the sheer brutal exercise of the power to discharge; but for the moment the important fact to be considered is that the discipline was secured.

Now arrives the union on the scene, organizes the people in the shop, breaks down the shop feeling and substitutes an industrial feeling of comradeship, eliminates the sense both of loyalty to and fear of the employer. What is substituted in place of the older methods for securing shop discipline? The discipline must be secured and maintained. Acceptance of the principle of collective bargaining does not imply the surrender by the employer of the power to maintain discipline nor the power to maintain efficiency. Though this may be misunderstood by workers generally, and though they may believe that through collective bargaining they can find that security of tenure so much to be desired, the power to maintain efficiency and discipline must still be left

with the employer. It is the checking of the abuse of the power only that, in the present order of society, unions may insist upon. The unemployment problem is not a shop problem—it is a *community* problem.' To keep individual workers in any shop or even in any industry, will not solve the problem.

CHAPTER XII

1914-1915. THE CLASH

IN Chapter X we analyzed the opposing tendencies in both directions. In the latter part of 1914, before these tendencies came to a clash, in reviewing the institutions of the Protocol and the prospects of the future, I said:

As one who has been on deck, may I suggest that the great big problem of the hour is—How can the national movement for efficiency and economy be united with the national movement for democracy in industry? How can the discipline and efficiency of the shop be maintained, yet the workers be granted a larger share in the management of industry? No greater problem faces this or any other country at the moment, though it may be overshadowed for the time being by the smoke of the battlefield and the thin, small voice “be hushed in the noise of the drums.” *

The government meteorological service watches the development of storm centers and fixes with remarkably definite accuracy the point and time of contact between impending storms. So accurate is its information and

* National Society for the Promotion of Industrial Education, Bulletin No. 20. Proceedings Eighth Annual Meeting, Richmond, Virginia, December 9-12, 1914, p. 131.

forecast that sailors will not go out upon the Great Lakes or the oceans when storm warnings are given. We need a "storm service" for industrial difficulties. In 1914 storm signals were out in the cloak industry.

The chairman of the Committee on Immediate Action, though successful in averting conflict in something like ninety per cent of the cases, soon found himself in difficulty. His duty was to apply existing law to facts. He did not find that in the "hire and discharge" issue there was a law sufficiently explicit for him to apply. He himself became convinced that the rule had not yet been devised which he could apply to such cases. So far as the law outside of the industry was concerned, as established by the law courts, there was no doubt. A Kansas statute made it illegal to discharge men for belonging to a union. When its constitutionality was attacked, the United States Supreme Court held that it was unconstitutional. The basis of the prevailing opinion is that, since the employee in the case was an employee hired "at will" and therefore could himself leave at any time, the employer was free to discharge him at any time; and since the employer was free to discharge, he could discharge for any or no reason, and therefore could discharge him upon the ground that he belonged to a union. "Yes," held the minority, "where the hiring is at will neither party is bound for any definite period and therefore may terminate the relation at any time; but it does not follow

that the discharge may be based upon *any* reason. If the discharge is *because the worker belongs to the union*, it may be against the public interest, just as it may be against the public interest if he is discharged *because* he belongs to the militia, and we cannot say that the determination of what constitutes the public interest in such directions is not for the State." The minority judges said upon this score:

There is nothing in the statute now under consideration which prevents an employer from discharging one in his service at his will. The question now presented is, May an employer, as a condition of present or future employment, require an employee to agree that he will not exercise the privilege of becoming a member of a labor union, should he see fit to do so? In my opinion, the cases are entirely different, and the decision of the questions controlled by different principles. The right to join labor unions is undisputed, and has been the subject of frequent affirmation in judicial opinions. Acting within their legal rights, such associations are as legitimate as any organization of citizens formed to promote their common interest. They are organized under the laws of many states, by virtue of express statutes passed for that purpose, and, being legal, and acting within their constitutional rights, the right to join them, as against coercive action to the contrary, may be the legitimate subject of protection in the exercise of the police authority of the states. This statute, passed in the exercise of that particular authority called the police power, the limitations of which no court has yet undertaken precisely to define, has for its avowed purpose the

protection of the exercise of a legal right, by preventing an employer from depriving the employee of it as a condition of obtaining employment. I see no reason why a state may not, if it chooses, protect this right, as well as other legal rights. . . .

There is a real, and not a fanciful, distinction between the exercise of the right to discharge at will and the imposition of a requirement that the employee, as a condition of employment, shall make a particular agreement to forego a legal right. The *agreement* may be, or may be declared to be, against public policy, although the right of discharge remains. When a man is discharged, the employer exercises his right to declare such action necessary because of the exigencies of his business, or as the result of his judgment for other reasons sufficient to himself. When he makes a stipulation of the character here involved essential to future employment, he is not exercising a right to discharge, and may not wish to discharge the employee when, at a subsequent time, the prohibited act is done. What is in fact accomplished, is that the one engaging to work, who may wish to preserve an independent right of action, as a condition of employment, is coerced to the signing of such an agreement against his will, perhaps impelled by the necessities of his situation.

The majority judges, quoting the opinion of Mr. Justice Harlan in the *Adair* case (208 U. S. 161) said:

While, as already suggested, the right of liberty and property guaranteed by the Constitution against deprivation without due process of law is subject to such reasonable restraints as the common good or the general

welfare may require, it is not within the functions of government—at least, in the absence of contract between the parties—to compel any person in the course of his business and against his will to accept or retain the personal services of another, or to compel any person, against his will, to perform personal services for another. The right of a person to sell his labor upon such terms as he deems proper is, in its essence, the same as the right of the purchaser of labor to prescribe the conditions upon which he will accept such labor from the person offering to sell it. So the right of the employee to quit the service of the employer, for whatever reason, is the same as the right of the employer, for whatever reason, to dispense with the services of such employee. It was the legal right of the defendant Adair—however unwise such a course might have been—to discharge Coppage (the employee in that case) because of his being a member of a labor organization, as it was the legal right of Coppage, if he saw fit to do so,—however unwise such a course on his part might have been,—to quit the service in which he was engaged, because the defendant employed some persons who were not members of a labor organization. In all such particulars the employer and the employee have equality of right, and any legislation that disturbs that equality is an arbitrary interference with the liberty of contract, which no government can legally justify in a free land.*

Thus we find judges of the highest court in the land uniting in agreement that it is a corollary of the principle of human liberty that where the worker is free to leave at any time, the employer is equally free to let him go,

* *Coppage v. Kansas*, 236 U. S. 1.

the exception of the minority judges being based solely upon the ground that if the employer would keep the worker but for the man's membership in the union, there is underlying this kind of discharge an infringement of the liberty of the worker, in that he is prevented from joining a union—thus the constitutional basis for legislative enactment upon the subject.

In another case the union was sued for conspiracy by a former member, claiming that he had been discharged by reason of the request of the union. The decision of the court in effect was a statement to the complainant that since he was an employee at will and could leave at any time, the employer could discharge him at any time. "That he discharged you because the union requested it gives you no cause of action. You never had a permanent right to your job; therefore, you could not lose it." Thus the law of the courts is clear. The principle of liberty of contract is applied equally to employer and to worker. "If you are free to go at any time, your employer is free to let you go at any time."*

The Protocol did not change the "hiring at will" relationship between individual employer and individual worker. Except later by agreement in the specific cases of a few week workers, there was no term of em-

* Any man, in the absence of a contract to work a definite time, is held in *Roddy v. United Mine Workers*, 41 Okla. 621, 139 Pac. 126, L. R. A. 1915 D, 789, to have a right to quit whenever he chooses, for any reason satisfactory to him, or without any reason.

ployment, and it was the practice for workers to leave even at the height of the season to seek new employment, if they could better their positions. While in some small shops where the workers were relatives and friends of the employer, it might be true that employees continued during the slack season, playing cards or otherwise amusing themselves club-fashion in the factory while waiting for work, this was not true in the industry generally. It was not practicable in plants of 100 or 200 employees.

The chairman of the Committee on Immediate Action, recognizing the gravity of this conflict between both parties to the Protocol, himself presented the issue to the Board of Grievances for determination. In the factory of Nathan Schuss, the employer had laid off 52 men at the end of the season. He had had in his employ a foreman who was about to go into partnership with somebody else. This foreman had been with the concern for twelve years. During the latter part of his administration, the employer found that a large portion of his product had been returned by customers as imperfectly made. In one instance an entire bill of \$1,200.00 had been returned upon the ground of poor workmanship. In discharging the foreman, he discovered that a very considerable number of men in the department were either relatives or friends of the foreman. The foreman having announced that he was going to begin his own

factory, the employer decided that he would reorganize the department entirely. He claimed the right to discharge such of his employees as he chose at the end of the season and to reemploy such of them as he should think proper, or to fail to reemploy such as he might not wish to reemploy. The union charged that this act in itself constituted "a direct present violation of the Protocol"; that after the worker was hired and retained, after trial, he had a right to the position "until such time as the employer remains in the same business, and the employee is not (affirmatively) guilty of any misconduct, and has not become incompetent to perform his work." This situation having been presented to the impartial chairman, he certified "that the issues presented in these cases are not the kind that were intended to be passed on by him, that he is not clothed with adequate power to decide them, and he shrinks from exercising a prerogative not clearly conferred upon him." In submitting the problem to the Board of Grievances, the chairman made the following suggestion:

The issues submitted herein relate primarily to the division of power between the employers and their association and the workers and their union. They belong to the class of cases that are in the highest degree provocative and calculated to promote strife. They cannot be settled by either side forcing its own interest to the disregard of the interest of the other. A true solution is only possible if both interests are recognized

and their divergent lines are made to converge. This can be better done by thinking than by fighting; by ingenuity, by invention, by construction, rather than by force. In the present instance, the interest of employers seems to center on securing of mobility, economy, and efficiency in the selection of their working force; while that of the union centers around protection against discrimination and loss of power. It does not appear that these two interests are incompatible or irreconcilable, and it is believed that an earnest effort to find a solution in mutual good faith and good feeling may be expected to give a working solution.

The parties deadlocked and the matter went to the Board of Arbitration.* It was thrashed out in December, 1914, before the full Board. In the course of the argument, counsel for the union said:

In regard to retaining men, we absolutely militate against the principle of recognizing merit as a ground for retention, as a ground for preference over the man that is less skilled, and we say this, that this is the principle upon which our organization rests, and with which it will have to stand or to fall, and that is the principle that the organization is not here in order to allow the so-called free play of nature or competitive forces, which will pick out twenty thousand men out of fifty thousand men, or women for that matter, and secure them constant, permanent and lucrative employment and leave the thirty thousand other men and women to smaller remuneration during seasons, and to no earnings of any kind, and starvation, after season.†

* Louis D. Brandeis, Hamilton Holt, William O. Thompson.

† Proceedings, Board of Arbitration, December 19, 1914, p. 84.

Again:

I do not know whether the Board fully appreciates the importance of these questions, and I want to impress upon you that, as far as we are concerned, it is not merely a question of substantial relief that we demand, but for us it is, and let us be perfectly plain and frank about it, a question of the existence or non-existence of the Protocol and of our established relations with our employers. . . .

In other words, as far as we are concerned, and I cannot make it too plain, it is the question of the life or death of the Protocol.*

This issue, thus forced to the front, was accepted in the same seriousness by the manufacturers. Indeed, as both sides saw it, the discharge issue meant, unsolved, the life or death of the Protocol. The name "discharge issue" was a misnomer. It implied that the employers desired entire abandonment of the policy of redress of grievances that had been in force for five years and that they wished the free exercise of their legal rights to discharge at will, without review. As matter of fact, they were ready to review any discharge where a real grievance existed or was asserted. The real issue was, What is a grievance? At the time of signing the Protocol the "grievances" in mind were those commonly accepted as such by employers and employees generally. It was

* Proceedings, Board of Arbitration, December 19, 1914, pp. 107, 108, 110.

not suspected that in time the mere act of discharge in itself would be regarded as a grievance. Quite apart from the law of the situation, the termination at will of an employment which has no time limit was not looked upon as something morally wrong. The underlying theory of the union's position in 1915 was, in truth, that by virtue of retention for a period of more than two weeks, the worker acquired a *status* in the shop.

Two of the investigators for the Federal Industrial Relations Commission agree that in cases of strike the workmen "feel that they have a property interest in their jobs, and that other workmen who take their places are fit subjects for abuse, ridicule and violence.*" "They want the jobs which they think are theirs. In order that they may get the jobs, it is necessary to prevent others from taking them." † Again, "to the union man, the union means something more than a machine to maintain fair wages and working conditions. It means an agency for securing employment, if employment is to be had in his particular craft. The union man pays dues into his union for protection." ‡ "The aim of the union is to have a monopoly of work in a particular trade." § Now it was this precise issue that in the

* Report on the Colorado Strike, George P. West, p. 103; Report on Bridge and Structural Ironworkers, Luke Grant, p. 109.

† Luke Grant: *Id.*, pp. 109-110.

‡ Luke Grant: *Id.*, p. 134.

§ Luke Grant: *Id.*, p. 135.

cloak industry was fought out in 1910 under the title of "the closed shop." It was precisely this monopoly that the employers would not assent to. And if we refer back (*ante*, p. 21) to the proffer of the "preferential union shop" we will find that one of its essential elements was that not only should the union be open to all workers in the trade, but that the employer should have the utmost "freedom of selection." In 1915, the issue, mark you, was not over the substitution of a non-union man for a union man, but the substitution of one union man for another, or by reduction of staff the substitution of none in place of the men laid off. This point of view of union men is to be distinguished from the aim at security of tenure discussed in Chapter XI. The latter is a common and a justifiable aim, but it recognizes that so long as industry is run by employers as administrators and the administrative function requires for its exercise the freedom to decide—the freedom to choose, a decision made *bona fide* by the employer should not be reversed, even if it result in misfortune to the worker. To turn over to a tribunal general review of the exercise of administrative power is to run industry by tribunals. Some day we may be able to create a judicial system adequate to review all administrative acts, but it is not yet in sight. No tribunal could be invented to-day that could function in such a capacity in a large industry. If the employee had a *status*, it is clear that he could snap

his fingers at discipline and need not care about the efficiency of his work. And in an industry so complex, so full of inherent difficulties as the cloak industry, so utterly without tests of efficiency upon which judicial review could be based, the policy contended for by the union would have destroyed the industry. The employers so believed. They believed that so long as they were charged with the duties of administrators, it was a corollary of the principle of liberty that they should have the necessary freedom to decide. They regarded it, therefore, as much a matter of principle to them as their fight in 1910 over the closed shop. On the other hand, it was quite obvious that the union sentiment upon this subject was so strong that no group of leaders could have agreed upon modification of its position without losing the confidence of the membership. To them also it was a matter of principle. When counsel for the union said in effect: "The union is here to stand for *all* its members; by this we stand or fall," he was expressing truly the voice of the union.

Here, then, was conflict of principles, such conflict as makes for war, international and civil. The North says, "You may not treat men as property." The South says, "We have done so under the Constitution; we shall continue to do so hereafter as matter of right." War results. One European nation says, "The self-interest of a nation is higher than a treaty of neutrality." Another

says, "A treaty is a treaty, to be observed at any cost." War results. In international relations our only established method for deciding such conflicts of principle is by war. In 1915 the generally accepted method for deciding similar conflicts in industry is by force. Says the Erectors' Association, "We will not grant you the closed shop." Says the union, "We must have it; it is essential to our life." There being no other solution apparent, there is war—murder, anarchy, culminating finally in the dynamite outrages and the MacNamara convictions. Say the Colorado operators, "We will not deal with your union." Say the miners, "You must, for it is our very life, social, political, industrial; all depends upon it." Then follows war, murder, the breaking down of civil government, with its culmination in the Ludlow killings. The world stands aghast, yet with more or less complacency pays the price (as it is doing on the battlefields of Europe) and accepts the solution of force as the only way of "practical men."

To the student of judicature, it all seems stupid, for great moral issues are settled by debate both in courts of law and in parliaments, and progress is made even through error and failure. The rights of men are defined by process of reasoning, decision, criticism, reversal, decision. Take the whole present trend of the law on social questions—how changed it is from what it was half a century ago. Only a decade ago, the United

States Supreme Court was criticised as the resting place of old men of obsolete economic views; to-day its decisions sustaining the "essential human rights" of men are quoted by every social reformer. So to the lawyer, the gravity of the issue does not make him despair of its solution by the processes of reason, and he accepts temporary defeat of the principle itself, for he knows that in the end the right will triumph by this process. The minority becomes the majority view sooner than the public suspects—if the minority view is the sound one. The recorded opinion of the minority judge is read and re-read and when its truth becomes clear, spreads over and conquers the field of error.* The same rule applies to legislation. The protests of this year's minority are the controlling view of next year's majority.

How can force accomplish an equivalent result? The conflict of principles is not determined. Right does not become right because superior force strengthens wrong. It may be beaten down for the time being, but "truth crushed to earth will rise again." So the conclusion is inevitable that though "many instances might be cited in the industrial world, where the use of physical force has for a time won advantage for the side that has used it. Such gains, however, are temporary and do not make for permanent industrial peace. . . . Force may subjugate one side or the other in an industrial dispute,

* See Abbot: "Justice and the Modern Lawyer."

but it will not remove discontent. It will not establish justice. When one side is all-powerful and the other side is subservient, there is sure to be injustice. Where there is injustice, there will be discontent." *

The advocates of collective bargaining, in pressing their method forward as the way to industrial peace, fail, however, to make sufficient allowance for the fact that latent in all industrial situations are grave moral issues still unsolved,—principles not yet defined; grave issues like the ones dramatically arising in the cloak industry in 1910, 1914 and 1915 and asserting themselves in the structural iron trades and in the Colorado mines as in the cloak industry in New York. Moreover, in industrial matters these moral issues are of the most elementary nature;—we are yet in the kindergarten stage of education upon this branch of our ethics. Mere "bargaining" will not settle such matters; mere compromise, negotiation, mediation, conciliation. These fail, as they did in 1910, 1914 and 1915 in the cloak industry, as they did in the structural iron and coal industries. They must fail. How can it be otherwise? Shall either side sacrifice its convictions? The world's charter of liberties is made up of the sacrifices for, not of, convictions. It may be true that so far as political liberty is concerned, revolution was necessary, and we

* Report on Bridge and Structural Ironworkers, by Luke Grant, p. 139.

are to-day enjoying the fruits of the revolutionists' sacrifices. But revolution in industry, as we have seen, does not and cannot make for real progress, and if it does not, who shall say that either union or employers' association, acting under joint agreement, shall surrender convictions honestly believed in? Far better were it that all Protocols—all trade agreements—should go than that men shall consciously compromise what they believe to be their principles. Shall, then, the alternative be—for either side—Compromise of Principle or Contest of Force?

CHAPTER XIII

1915. THE BOARD OF ARBITRATION. WHAT IS "FAIR AND REASONABLE"?

IF "bargaining" fails, what then? Under the Protocol both sides were committed to the submission to the existing Board of Arbitration for judicial determination of just such controversies as these. For nearly five years this method had been employed successfully. The Board had made all of its decisions unanimously and all of its decisions had been accepted by both parties. The serious action of the Board in January, 1914, in urging the representative of the union to resign—probably one of the most remarkable recommendations ever made in a labor controversy by an impartial tribunal—was accepted by the union and, as we have seen, received ultimately the official endorsement of the union convention. The Board had never lacked courage in meeting issues squarely, though it employed tact and diplomacy whenever it could and sought always to conciliate rather than to arbitrate.

The decision of the Board of Arbitration on the "discharge" issue was handed down on the 21st of January, 1915. It is quoted in full as Appendix C. After review-

ing the history of the Protocol and the purposes underlying its making, the Board found that "of the essence of its existence, must be a spirit of fairness" and that it must be understood "as a basis for any proper interpretation of it and application of it that the parties desire by its provisions to promote, foster and develop square dealings in all of the relations of employer and employee; . . . that unreasonable acts or demands are not to be expected from either of the parties, and that anything of that nature would be in violation of the fundamental purpose of the Protocol." That applying these basic principles, "the spirit of fairness and the rule of reason be used to determine whether or not an employee should be discharged; that the right of determining this must in the first instance rest with the employer, and that any employee, deeming himself unjustly treated, has a right to make his complaint and have his grievance heard in the regular manner." The Board then decides that in the hearing of discharge cases the parties administering the Protocol are "to look into all the facts and to apply the same standards for determining the case, thus eliminating the burden of proof from all consideration." The Board then said: "The power of administration, discipline and discharge, vested in the employer shall be exercised in a fair and reasonable manner, and if the propriety of the action is questioned, shall be subject to review." For the purpose of determin-

ing what is "fair and reasonable" the Board said that the spirit and purpose of the Protocol included the following:

First. To assist the employer in the peaceful and uninterrupted operation of his factory, in establishing and maintaining reasonable discipline, and in promoting such economy and efficiency of production as may be secured by coöperative effort.

Second. To assist the Union in establishing the strength and efficiency of its organization, and raise the standard throughout the trade, to the end that the Union power may be adequate to carry the responsibilities and perform the duties imposed upon it by the Protocol, and to promote the coöperation and good will between the Union and the Association, so essential to the successful operation of the Protocol, and to the solution of the problems of the industry.

Third. Subject to the foregoing provisions, to assist the individual worker in obtaining such security and continuity in his employment, such equity in the distribution of work and such fairness of general treatment and of conditions as may be possible and practicable, having regard to the unavoidable fluctuations and exigencies of the work, and the imperfections and limitations of ordinary human nature by which this enormously difficult industry must be administered.

The Board then went on to discuss the fundamental problems of the industry—the matters of standardization of prices, the enforcement of standards throughout the industry, and the need for devising ways and means

to release the energies and the time of those now engaged in the disposition of individual grievances for attention to the larger problems of the industry.

It will be observed that the Board said nothing about the term of hiring except that the rights of the parties, unless modified by the Protocol, remained as they were before. The Board said: "It was not intended by the Protocol to change the relation of the employer to the employee, otherwise than as I (we) have stated and as is expressly stated in the Protocol. In all other respects the legal rights were to remain what they had been before." The Board, however, found that by signing the Protocol, the union "relinquished its right to secure by strike more than it was getting, and there was substituted for that relinquished power of strike, the powers created under this agreement, which constitutes a government to control the relations between employer and employee"; and that the Protocol had substituted for the strike as a means by which the union might enforce "the fair, just and reasonable exercise by the employer of his legal rights in regard to the administration of business, and in regard to hiring and discharging," the machinery for redressing grievances.

It will be seen that the Board does not sustain the appeal of the union. It places its reliance upon the rule of "fair and reasonable" applied to the facts of each case as it arises, and gives to the union the right to re-

view every case where it feels aggrieved. It did not order the reinstatement of the Schuss workers. On the other hand—as became clearer with the lapse of time—the determination of what is “fair and reasonable” in the circumstances of the case could only be made with a clear, definite guiding principle as a base. With the underlying clash of philosophies of employment in the situation—the union fighting for one theory, the employers for another—the decision of the Board of Arbitration, as practically applied, meant inevitably a series of litigated test cases, through which might be evolved a guiding set of principles. The impartial chairman had no power to make “Protocol Law”: therefore he could not begin the process of evolution. The decision of the Board of Arbitration, as we shall see later, did actually bring about further litigation. It came up for the consideration of an entirely new tribunal—the Mayor’s Council of Conciliation (*post*, Chapter XV). The creation of this Council and the circumstances leading up to it make in themselves an instructive chapter.

CHAPTER XIV

THE TERMINATION OF THE PROTOCOL

AFTER the rendition of the decision of the Board of Arbitration, its lack of conclusiveness as a ruling precedent became more and more apparent as cases came before the impartial chairman. Issues arose in four distinct cases in which the union took the position that "regular" employees had been, by the Board's decision, granted substantial permanence of employment and the right to retention during the slack season, and that all who were primarily dependent upon the industry for their earnings must be regarded as such "regular" employees. Another appeal was taken to the Board of Arbitration; several sessions were held, and the Board on the 5th of February, 1915, again reiterated the rule of "fair and reasonable," directed that each question should be taken up as a question of fact, and left the parties with no more definite rule than it had announced before. Later conferences of both parties with the Board were pending when the crash came.

It is quite likely that in the course of time, by bringing up case by case as a test, a code would have been developed, clearly defining the rights of the parties. But

the repeated litigations, coupled with bad business conditions generally and an increasing feeling on the part of the members of the manufacturers' association that they were being penalized and that the industry was being treated as an experiment station for society generally, instead of as a business, resulted this time in the creation of a strong anti-Protocol party in the manufacturers' group. Other causes contributed. There was in existence another manufacturers' association with which the union sought an agreement. This action the manufacturers believed was not in consonance with the spirit of the Protocol. After the 1st of January, 1915, there was enough tinder in the situation for a single spark to start a conflagration.

On the third of May a stoppage of work occurred in one of the shops of the Association. (This was while the Board of Arbitration was still wrestling with the problem of hiring and discharge.) The usual complaint was sent to the union on that day and repeated during the following week. The two Chief Clerks ordered the people back to work. They returned to work and a second and a third time stopped. Picketing of the shop began, lasted for a week, and though repeated protest was made to the union, no relief was accorded. Later, when the facts became public, the counsel for the International Union accepted for his client frank responsibility for negligence in the premises, and careful examination

then made demonstrated that the negligence was not willful nor deliberate. Several of the officers of the union had been indicted by the Grand Jury—(they were subsequently acquitted)—and the arrests following the indictment took place during the week of the strike and picketing in this particular shop. It is probably the fact that failure to give to the Association the redress to which it was entitled was due entirely to the distraction of the attention of the officers to this other matter.

Coming at a time, however, when the relations between the parties were so tense, this failure was the death of the Protocol. On the 17th of May, the Association wrote the union, reviewing the experiences of 1913 and the action of the Board of Arbitration at that time* and stated:

Within the past year, you have questioned the right of the employer to select his staff, to hire and discharge freely upon the basis of efficiency and economy, or discharge for insubordination in the shop.

The Association in this letter stated that although the Board had decided that both the power of management and administration of discipline within the shop remained with the employer, as it was before the signing of the Protocol, the original contentions were revived, "making necessary more conferences, more litigation and more sessions of the Board of Arbitration." Reviewing the

* See Chapter IX.

facts relating to the shop strike and picketing, the Association said:

This flagrant disregard officially of your duties and our rights, after repeated warning, gives us no alternative, except to regard your present conduct as an abandonment of the Protocol and a repudiation of its obligations. These matters have gone beyond the point of endurance. We see no sense in securing decisions of the Board of Arbitration if these decisions are ignored. . . .

. . . we fail to see anything to be gained by further appeals or decisions of the Board of Arbitration or by conferences.

We deeply regret that after nearly five years of effort to join in a coöperative work with you, we should now be obliged to come to these conclusions.

The union replied, regretting that the Association had "not seen fit to state its position and intentions in a franker and more direct manner." It contested the assertion of the Association that the union had "denied or are denying the right of the employer 'to select his staff, to hire and discharge freely upon the basis of efficiency and economy, or to discharge for insubordination ~~in~~ the shop.'" But it contended that the Board had decided "in clear and unmistakable language that the employers' right to discharge must be exercised in a just, fair and reasonable manner; that any worker deeming himself treated unreasonably and unjustly has the right to make complaint, and that all grievances of discharged

workers must be investigated and adjusted on their merits." The union in this letter insisted that it was not they who questioned "the right of the employer to discharge his workers contrary to the decision of the Board of Arbitration," but that it was the Association which questioned "the right of a discharged worker to complain against an unfair discharge in clear defiance of the decision of the Board." The union took the position "that the workers are clearly entitled to a method of redress of their grievances based upon any acts of alleged unfairness and injustice on the part of the employer in view of the fact that they are required to surrender their only other instrument for the redress of such grievances, the right to strike." The union asserted that it was ready "to defend this very reasonable position before the Board and is prepared to abide by the decision of the latter." It further stated: "That we should hold different views on the subjects of your communication is a position neither novel or striking. Disputes on various points have often arisen between our respective organizations, and the agreement between us provides for a method of settlement of such disputes. What is novel and striking in your communication is your expressed determination to withdraw the present disputes from the decision of the Board of Arbitration and to take their adjustment into your own hands." The union concludes by saying:

The Protocol gives each party the right to abrogate the instrument at will. We have not chosen to exercise that right, and we certainly cannot recognize your power to exercise that right for us and in our behalf. If your Association has decided to abrogate the Protocol, it must do so in its own behalf, taking all the responsibility for the act.

It then called upon the Association definitely to state whether or not the communication meant that "your Association has chosen to abrogate the Protocol between us." To this, on the 20th of May, the Association replied: "Our letter was intended to convey to you in simple language that our mutual, official relations were severed and severed by your acts." ". . . we regard further conferences with your organization or sessions of the Board of Arbitration as useless. We shall not ask the gentlemen of the Board who have made so many sacrifices to spend more of their valuable time making decisions, which you admit now you cannot enforce upon your members, even in so simple a matter as picketing and shop strikes."

With the termination of the Protocol, all of its institutions fell—the Board of Arbitration, the Board of Sanitary Control,* the Board of Grievances, the Committee on Immediate Action. The union believed that the termination of the Protocol, coming at the time it did,

* This Board, notwithstanding, continued its work in the manner indicated in Chapter IV.

was a deliberate attempt on the part of the manufacturers' association to destroy the union. Subsequent events showed clearly that this was not the intention of the manufacturers. They had been aggravated beyond measure. All of the efforts that had been made to develop constructive legislation were blocked by the "discharge issue" and the unrestrained shop strike. As a matter of fact, the manufacturers wanted to settle once and for all these two fundamental matters and to secure real peace through law and order.

With the death of the Protocol, it seemed that the industry would relapse into the old anarchical conditions of pre-Protocol days. The union immediately began preparations for a strike. It mobilized its forces, held great mass meetings, denounced the manufacturers, and a general strike similar to the 1910 strike seemed imminent. During the interval there was more law and order in the shops than there had been at any one time in the previous five years. The union demonstrated completely its power of discipline in the hour of crisis. It instructed its members to refrain from strike until orders were given. On the other hand, the fear of wholesale discharges if the employers were given the right of discharge without ready review was found to be unjustified. Fewer people, in fact, were discharged at this particular time than at any other time.

On the 28th of June, 1915, the union addressed to the

manufacturers' association a communication which, after reciting the pendency of various matters of wages and other issues before the Board of Arbitration and the fact that "the instruments through which our grievances have been settled and our mutual relations have been regulated for the past five years" have been destroyed, stated:

. . . now our industry faces the grave question as to what is to take their place.

The situation, as we view it, admits of but one answer: Either the employers and workers will get together on a fair and reasonable working agreement for at least the near future, or our industry will find itself involved in an embittered labor struggle, which may spell ruin for many manufacturers, and suffering and privation for tens of thousands of workers and many more thousands of persons, directly or indirectly dependent upon our industry.

The workers fully realize their share of responsibility for such a public calamity, and are ready to make every reasonable effort to avert it. But the responsibility rests upon the manufacturers as fully as upon the workers.

It proposed that, "In order to secure a complete and speedy adjustment of all disputes and to avoid any prolonged and fruitless discussions and negotiations, . . . our respective contentions be forthwith submitted to a Committee or Board of unbiased persons under the presidency of Mr. Louis D. Brandeis, or Mayor Mitchel,

or any other person of recognized standing in the community." The Association responded, on July second, by saying, "We are willing to go before a Council of Conciliation, to be made up of disinterested and neutral parties, and to lay our case before them, with the understanding that arbitrable questions may be left to a Board of Arbitration, to be subsequently formed, if necessary." This proposition was accepted by the union. In offering to submit its case to a disinterested tribunal the union accomplished a master stroke of diplomacy. It placed the Association in a position of apparently declining to accept the juridical method of adjustment of difficulties, after five years of experience. The communication of June 28th, 1915, by the union to the Association, is *le grand triomphe* of the Protocol experience. Face to face with the crisis, with grave issues involved, the union accepts as an alternative to the strike, the decision of a public body and the determination of public opinion intelligently exercised, for its guidance. If the Association was criticised for halting and for hedging about its acceptance with reservations as to non-arbitrable questions, it will be recalled that there was involved a fundamental principle, namely, the liberty of the manufacturer freely to select the workers in the establishment. This, to the manufacturers, seemed so vital that it fell within the scope of non-arbitrable matters.

To select such a Council presented immediately a

task for both parties, and though relations between the two had been broken by the termination of the Protocol, they were resumed for the purpose of agreeing upon the method of bringing the Council of Conciliation into being.

CHAPTER XV

THE MAYOR'S COUNCIL OF CONCILIATION

THE plan promptly assented to by both parties provided for the creation of a Council of six, to be appointed by the Mayor of the city. This plan was approved by the Mayor and he immediately appointed as the members of the Council the leader of the Society for Ethical Culture, a former judge of the United States Circuit Court of Appeals, a former dean of the Columbia Law School, the City Chamberlain, the former head of the Board of Arbitration, and the chairman of the Committee on Arbitration of the Chamber of Commerce.* The Council held twenty-one sessions, public and executive. The opening words of its chairman are significant: “. . . the appointment of this Mayor's Committee is an event of some importance in the history of New York. . . . twenty years ago a Mayor of New York would not have appointed a committee to assist the two parties in the removing of the causes of industrial friction. The fact that your Chief Executive officer deems it a part of his

* Felix Adler, Walter C. Noyes, George W. Kirchwey, Henry Bruere, Louis D. Brandeis, Charles L. Bernheimer. Dr. Adler was chosen as chairman.

official duty to call upon a number of citizens for the purpose of tendering their friendly offices in this fashion indicates the new social note that is being struck in our politics. . . ." In this address, the chairman described the functions of the Council. He said: ". . . we are not here to arbitrate; we are not here to decide. We are here on the part of the City, representing the community, to tender our friendly offices with a view to industrial peace. And . . . with a view to industrial progress. Yet, despite the fact that our function is purely that of suggestion and advice, there is a certain invisible authority lodged in this volunteer body; it represents a certain pressure, though it does not represent and is not equipped with coercive power. It is this distinction between power and pressure; and in this Committee, in a way, is lodged a certain pressure; that is, the pressure of the whole upon the part, the pressure of the whole City upon a certain fraction of citizenship of this town, the pressure of a community that seeks peace and welfare upon that portion of the community in which peace and welfare are for the moment endangered. It is the pressure of the forces of integration in a community upon a point where disintegration is about to or possibly may set in."

Let us stop for a moment to consider the significance of this thought. The old Board of Arbitration derived its powers from "the consent of the governed," that is, the employers' association and the union. It had no

power of enforcing its decisions or judgments. When either party terminated the Protocol, the Board of Arbitration fell. If, in January, 1914, it found great efficacy in a mere recommendation to one of the parties, it was because at the moment of crisis the Board was environed by an aroused and informed public opinion. Unlike the Board, the Mayor's Council, though created upon the initiative of the parties in interest, owed them after its creation no duty whatsoever, save to render accurate, intelligent judgment and to employ such tact and consideration as would result in bringing about a new treaty of peace. On the other hand, it owed to the community a weightier duty—the duty to prevent strife, to find firmer solutions for existing issues and to create a better base for future relations. It brought to this task “the pressure of the entire community upon a part.” The establishment of the Mayor's Council marks a real step forward in the invention of machinery for the solution of industrial controversies. It represents the intelligently organized power of the community applied to the rational solution of an industrial crisis. It is public opinion based upon knowledge, ascertaining the facts, arriving at conclusions, and stating them in the name of the entire community.

After it had rendered its findings, the *New York Times*, editorially commenting upon the work of the Council, said:

Neither side can get on without the support of public opinion, and that will go to the side which comports itself most nearly in accord with the Council. The Protocol had its faults but it kept a sort of armed peace for five years. The new treaty possibly will surpass it, not only in endurance under stress, but perhaps in producing better relations than those of avowed hostility.*

The *Evening Post* said:

The city now has a permanent board of arbitration for all disputes between the Cloak Manufacturers' Association and the needle-workers' unions. This points to the passing of the stage in which the public is a suppliant for peace, and to the acceptance by the disputants of the authority of the public to forbid war and to impose, in an impartial spirit, new terms of coöperation.†

May we not say, as the executive head of the manufacturers' association said, upon the announcement of the creation of the Council: "This is a better way of getting at the truth than a costly strike, which gets nowhere and settles nothing, and brings only violence and hatred in its train." ‡

The first task to which the Council addressed itself, after giving both sides ample opportunity to present their claims and contentions was to settle the issues which were still pending before the Board of Arbitration. The

* *New York Times*, August 7, 1915.

† *Evening Post*, August 5, 1915.

‡ *New York Times*, July 10, 1915.

Council obtained this result by clearly formulating its own opinion, disregarding every statement that had gone before. The fundamental rule was thus stated by the Council:

. . . the principle of industrial efficiency and that of respect for the essential human rights of the workers should always be applied jointly, priority being assigned to neither. Industrial efficiency may not be sacrificed to the interests of the workers, for how can it be to their interest to destroy the business on which they depend for a living, nor may efficiency be declared paramount to the human rights of the workers; for how in the long run can the industrial efficiency of a country be maintained if the human values of its workers are diminished or destroyed. The delicate adjustment required to reconcile the two principles named must be made. Peace and progress depend upon complete loyalty in the effort to reconcile them.*

Applying this fundamental rule, the Council laid out a definite application of rights and obligations in the relationship between employers and workers. With reference to the freedom of the employer to make selection of workers, to hire and discharge, the Council laid down:

1. Under the present competitive system, the principle of industrial efficiency requires that the employer shall

* Findings and Recommendations of the Council of Conciliation, handed down July 23, 1915, and accepted by union and Association, August 4, 1915.

be free and unhampered in the performance of the administrative functions which belong to him, and this must be taken to include:

(a) That he is entirely free to select his employees at his discretion.

(b) That he is free to discharge the incompetent, the insubordinate, the inefficient, those unsuited to the shop or those unfaithful to their obligations.

(c) That he is free in good faith to reorganize his shop whenever in his judgment, the conditions of business should make it necessary for him to do so.

(d) That he is free to assign work requiring a superior or special kind of skill to those employees who possess the requisite skill.

With regard to the equal distribution of work and the "right to the job," the Council declared:

(e) That while it is the dictate of common sense, as well as common humanity, in the slack season to distribute work as far as possible equally among wage earners of the same level and character of skill, this practice cannot be held to imply the right to a permanent tenure of employment, either in a given shop or even in the industry as a whole. A clear distinction must be drawn between an ideal aim and a present right.

The Council was not forgetful of the legitimate desire for security of tenure nor of the prime need for better regulation of employment in the industry, but it said: "A clear distinction must be drawn between an ideal aim and a present right" and explained:

The constant fluctuations—the alternate expansions and contractions to which the cloak-making industry is so peculiarly subject, and its highly competitive character, enforce this distinction. But an ideal aim is not, therefore, to be stigmatized as Utopian, nor does it exclude substantial approximations to it in the near future. Such approximations are within the scope of achievement, by means of earnest efforts to regularize employment and by such increase of wages as will secure an average adequate for the maintenance of a decent standard of living throughout the year.

And it clinched the thought with this firm statement:

The attempt, however, to impose the ideal of a permanent tenure of employment upon the cloak-making industry in its present transitional stage is impracticable, calculated to produce needless irritation and injurious to all concerned.*

When we lay the findings of the Mayor's Council side by side with the findings of the Board of Arbitration (Appendix C), it will be seen that what is "fair and reasonable" is no longer in doubt. With all due regard for the legitimate aim towards greater security of tenure, the *status* and "permanent right to the job" theory is blasted by clear analysis and statement of the situation of both parties. The need for efficiency in the industry is emphasized, though efficiency is not to be forwarded

* The full text of the Findings and Recommendations will be found in Appendix D.

at the expense of "the essential human rights of the worker"—which are defined. The freedom of the employer to decide, the recognition of his administrative function under the existing order of industry, is stated clearly and beyond misconstruction. In spirit and in fundamental purpose, the Board of Arbitration and the Council were in complete harmony. On the other hand, like many decisions of the courts, the decision of the Board of Arbitration required modification of statement and clarification. The Mayor's Council, in a sense, an appellate tribunal, with power to affirm, reverse or modify, did (without saying so) materially modify and clarify the statement of the rule by the Board of Arbitration. It may not be far wrong even now to say that it required the intervening period of time and the crisis itself to bring about such clarification of thought and statement.

So was a great industrial conflict disposed of—not by force, not by compromise of principle, but in a forum of the parties' own making, by clear declaration of principle, so clear that its own inherent soundness compelled acceptance from both sides.

Not only did the union accept the findings of the Mayor's Council as applied to the cloak situation in New York, but a few months later made them the basis of Protocol agreements in Boston and Chicago.* It

* See the issues of *Women's Wear* for September 22 and 27, 1915.

is not too soon to say that the principles laid down by the Mayor's Council are as certain to become a general *modus vivendi* in industry as the preferential union shop. By destroying the *status* theory, the mere act of discharge is no longer basis for litigation, and, in consequence, the discharge issue, like the closed shop, should no longer stand as a stumbling block in the way of better relations between the parties. They can now turn their attention once again to their joint problems—the problems of enforcement of standards, the repression of the shop strike, the solution of the piece price dilemma, and the better regularization of employment. But note this: The final result, so valuable to all parties concerned, could not have been accomplished by mutual agreement. It required *judgment*, impartial judgment, by a tribunal in which both sides had confidence and before which each side might have a full and complete hearing. Before such a tribunal there could be battle, not the battle of war, but the battle of ideas. The prime lesson of the 1915 experience is that *great conflict over vital principles will arise even under joint agreements. Such conflicts cannot be settled by force. Neither the strike nor the lock-out will help. They cannot be settled by courts of law; courts of law are not constituted to take care of them. They cannot be settled—indeed, should not be settled—by compromise. They must be beaten out in a forum of reason. If such a forum does not exist, it must be created. And*

even though it exist, errors of judgment, like errors of courts, must be expected. Such errors will require correction, modification, or even reversal. Through error, progress will be made. The rule for the forum, like the rule for the judge, would seem to be: "Hew to the line; let the chips fall where they may."

CHAPTER XVI

THE NEW TRIAL BOARD

IN the 16,000 or 17,000 cases that went through the machinery of the Protocol, no effort had ever been made to introduce any kind of formalism. When the rules for the Board of Grievances (Appendix B) were adopted, none of the lawyers attempted to apply the formality of legal procedure. In consequence, the complaints from one side to the other were in the simplest form. When the discharge issue came to be serious, it was found that this looseness of practice resulted in the filing of complaints containing no other statement than that So-and-So had been unjustifiably discharged, or that So-and-So had been unjustly discriminated against, and requesting an investigation. Upon such a bare conclusion, the clerks would go out to the shop, investigate, and, in case of their disagreement, the Committee on Immediate Action would take charge. The study made by the Department of Labor of the workings of the Board of Grievances * developed that a vast number of discharge cases was brought without any real founda-

* See Bulletins 98 and 144, Bureau of Labor Statistics, U. S. Department of Labor.

tion. The records submitted to the Board of Arbitration in 1914 showed that of 11,893 cases during the years 1911, 1912, 1913 and 1914, but 142 "discharge" cases went to adjudication, all the rest being either withdrawn, dropped or adjusted through the good offices of the clerks. In 1911, 5% of the "discharge" cases were withdrawn, 54% were dropped, 26% were adjusted. In 1912, 12% were withdrawn, 48% were dropped, 36% were adjusted. In 1913, 23% of the cases were dropped, 19% were withdrawn, and 45% were adjusted. In 1914, 22% were dropped, 18% were withdrawn, and only 54% were adjusted. These figures sufficiently indicate the very substantial mass of complaints either dropped or withdrawn. When the Mayor's Council came to consider this problem, it made the following application of its fundamental rule to the rights of the workers:

(a) . . . the workers have an inalienable right to associate and organize themselves for the purpose of maintaining the highest feasible standard as to wages, hours and conditions, and of still further raising the standards already reached.

(b) . . . no employee shall be discharged or discriminated against on the ground that he is participating directly or indirectly in union activities.

(c) . . . the employees shall be duly safeguarded against oppressive exercise by the employer of his functions in connection with discharge and in all other dealings with the workers. It is to be carefully noted

that the phrase "oppressive exercise of functions" need not imply a reflection on the character and intentions of the high-minded employer.

And the Council said, "A tribunal of some kind is necessary, in case either of the parties to this covenant believes itself to be unjustly aggrieved," but "the construction of such a tribunal is a delicate and difficult task, demanding the greatest care, lest on the one hand the movements of industry be clogged by excessive litigation, and lest on the other hand the door of redress be closed against even the most real and justified complaint." It therefore recommended that:

(a) Every complaint from either organization to the other shall be in writing, and *shall specify the facts which, in the opinion of the complaining organization, constitute the alleged grievance*, and warrant its presentation by one organization to the other. Such complaints shall be investigated in the first instance by the representatives of the two associations, chosen for the purpose, it being impressed upon them that they use and exhaust every legitimate effort to bring about an adjustment in an informal manner. In case, however, an adjustment by them be not reached, the matters in dispute shall be referred for final decision to a

(b) Trial Board of three, consisting of one employer, one worker and one impartial person, the latter to be selected by both organizations, to serve at joint expense and to be a standing member in all cases brought before the Board. The remaining two members shall be selected as follows:

The Association and the Union shall each make up a list of ten persons, to be approved by the other. From these two lists, as each case arises, each party shall select one person.

In establishing the rule that the complaint should specify the facts which constitute the alleged grievance, the Council was borrowing from the lessons of judicature. It is the experience of all courts that where the doors of the tribunal are always open, litigation multiplies beyond all reason. Without in any sense being technical or too formal, there would seem to be no reason why any complainant should not be required to set forth, at the time of the assertion of the grievance, the facts upon which he rests his claim. This simple rule must undoubtedly eliminate a very large mass of the litigation that existed under the old system. Another change of procedure took place. The Committee on Immediate Action (as was pointed out in Chapter X) consisted of two partisans and one non-partisan, the non-partisan being neither a manufacturer nor a worker. The problems coming before such a tribunal are shop problems, requiring the technical knowledge possessed only by a manufacturer or a workman. In recommending that the trial board itself should be made up of three, of whom one should be an employer and one should be a worker, the Council undoubtedly took a step forward. By so doing, it left the Chief Clerks as advocates to fight out

their respective claims before the tribunal and brought into each situation the technical shop knowledge of the employer and worker, at the same time putting all three of the members of the board upon their honor as judges.

Another change:—The impartial chairman of the old Committee on Immediate Action had been retained at an annual salary. When this procedural change was carried over into the dress and waist industry in New York in 1914, the employers' association and the local union in that industry agreed that the impartial chairman should be employed *by the case* at a fixed stipend, each side to pay half. This expense item in the administration of the law had the beneficent effect of forcing the clerks to agree diplomatically and thus avoided useless litigation. Influenced by this experience, when, after the acceptance of the recommendations of the Mayor's Council, the list of impartial men was made up, both employers' association and union agreed in the cloak industry that there, too, payment should be made according to the service rendered in each case. This should have the effect of preventing useless litigation.

It is yet too soon to draw any deductions covering the relative efficiency of the new method of procedure over the methods of the old Committee on Immediate Action. Since the acceptance of the recommendations of the

Council, the new machinery has been tried in several cases coming up before trial boards.* In the shop of Charles Lavine & Co., it appeared that it became necessary for the employer to curtail the number of people in one of his departments, and accordingly five operators were discharged. The union immediately filed a complaint, charging that four operators had been discriminated against for union activity. One was a former shop chairman, another was a member of the price committee, while a third was then a member of the executive board of the union. After hearing the evidence of both sides, the chairman of the trial board † rendered the following decision for that body:

In the matter of the complaint against the firm of Charles Lavine & Co., of 126 West 22d street, for discharging operators Boxer, Gopen, Lorber and Kaplan, all active members of the price committee and former shop chairman, claiming that they intend to curtail their factory, while the remainder of the employees such as finishers, pressers and cutters, have not been approached in this regard, wherein it is charged that the action of this firm is one of discrimination against the above mentioned people for union activity, I beg to say that, after a full hearing of the case, I have come to the conclusion that the discharge of these four operators was legitimately for

* International Cloak Co. case—*Women's Wear*, September 15, 1915; Prakin & Lebofsky case—*Women's Wear*, September 16, 1915; Charles Lavine & Co. case—*Women's Wear*, October 11, 1915.

† Cyrus L. Sulzberger, chairman; William Dann for employers, and J. Sepin for workers.

the purpose of reorganizing the factory and that no discrimination for union activity has been shown.

These cases would seem to indicate that the rule in cases of discrimination and discharge was stated by the Council with sufficient clarity and definiteness to reduce the issues for trial boards to simple questions of fact. The Lavine case is significant, for in that case the discharged employees occupied official positions as representatives of the union, and this was not taken as conclusive evidence of intention to discharge for "union activity," but considered together with all the other facts in the case. Undoubtedly, the ruling by the Council upon the fundamental issue that had disturbed the relations of the parties for nearly five years will of itself relieve the strain and make unnecessary much of the complex machinery of the Protocol. Indeed, when the union in its communication of June 28th suggested a new agreement, it said: "We do not desire to revive the Protocol with its intricate machinery." The experiences of the parties leading up to the termination of the Protocol convinced both that the machinery for redressing grievances was too free of access. If we turn back these pages to the consideration of the 1913 experience, we will find that at that time the union was torn with conflict over belief that the machinery was *inadequate* to redress grievances. Thus we do learn our lessons by bitter experience only. In 1913 the leaders of the union

were ready to destroy the Protocol because of the inadequacy of the machinery to redress grievances. In 1915 they would simplify procedure in order to revive the Protocol. The explanation, of course, is that there is no way of determining whether machinery of this character is either adequate or inadequate, except by actual experimentation. We "learn by doing." One lesson has been learned: Too much opportunity for litigation is quite as bad as not enough.

CHAPTER XVII

THE REVIVAL OF THE PROTOCOL

WHEN the Mayor's Council first called the parties into executive session, the chairman asked: Can we not secure your immediate assent to the continuance of the Joint Board of Sanitary Control? Both sides answered, Yes. Thus the work of the Board, described in Chapter IV, was continued—certainly a high tribute to its management. Then the Council took up tentatively the various provisions of the Protocol,* and found, if the “discharge” issue were disposed of satisfactorily, Articles I, II, III, IV, V, VI, VII, VIII, IX, X, XI, XII, XIII, XIV and XV could again be made acceptable to both parties. In consequence, the Council first took up this issue, then considered the questions relating to immediate increases of wages and establishment of standard rates per hour for piece workers, and thereafter made recommendations upon these branches of the subject.† It also recommended that the parties submit to the arbitrament of the Council two questions, one involving over-

* See Appendix A.

† See VI, Appendix D.

time work on Saturday and the other the number of legal holidays to be observed in the industry.

Thus, with the disposition of the "discharge" issue, the revision in machinery for redressing grievances, the advance in wages and the matters reserved for arbitration, the old Protocol was revived—save in two further important respects. First, the new agreement was tentative and for a definite time. It was to continue "for the period of two years" from the date of the recommendations and "thereafter for like periods of two years, unless terminated by either party on two months' notice," with provision for modifications to be presented at least two months before the termination of any period.

Next, in making these recommendations as to wages and machinery, the Council frankly admitted its own inability within the time at its disposal to grapple fully with the problems presented to it. Therefore, in addition to securing the assent of both parties to the re-establishment of the Board of Sanitary Control, at the very outset it secured also their assent to the continuance of the Council as a Commission for the purpose of "investigating thoroughly the fundamental problems of regularization, standards of wages and enforcement of standards throughout the industry, of trade education, of a more thorough organization of the industry; and on the basis of such investigation to submit a construc-

tive policy to both organizations." This assent of both parties was subsequently ratified by formal appointment by the Mayor. In its recommendations, it will be noted that the Council, referring to its continuance in existence for study and constructive recommendations, said: ". . . the Council . . . will be available whenever the parties desire to consult with it, and if either organization feels aggrieved against the other, such organization may address the Council upon the subject, and the Council will do the best it can to assist." Questions of interpretation did arise even before both parties accepted the recommendations, and the manufacturers asked the Council to make supplementary interpretations before filing their acceptance. This the Council declined to do, stating that in its opinion its recommendations were sufficiently clear, and unofficial interpretations need not be considered. It did say, however, that if the recommendations were accepted, it would hold itself in readiness to interpret any of the provisions of the recommendations at any time actual controversy arose.

When both parties accepted the recommendations *in toto*, the old Protocol provisions enumerated were revived, the Council of Conciliation became the new Board of Arbitration, and besides became the impartial commission to aid both parties in the rational study and solution of their joint problems. In securing a body of

men as arbitrators not one of whom was under obligation to either of the parties because of his selection, thus backed by the appointment of the Mayor and public opinion, we must admit that a change took place in the direction of industrial progress in this industry. In securing the aid of impartial and outside study for the better solution of the problems affecting the industry, the parties surrendered in exchange some part of their independence as organizations. The old Protocol was called "perpetual" because it had no definite time limit. It was less perpetual than the newer document, for it could be terminated at any time. Every two years the new document is subject to revision, and it may be expected that controversy will be left to accumulate for such occasions and possibly make for serious friction again. On the other hand, under the old agreement there might be controversy at any time. Whether or not this change is to the advantage of either party or both remains to be seen; but it is not too optimistic to believe that the issues which tore up the industry and the Protocol having been disposed of, attention will be concentrated from now on upon the constructive legislation required for the upbuilding of the industry as a whole. If both join in such a work with the aid of the Mayor's Council (now Commission), they should lose something of the old feeling of antagonism—at least until some new large issue comes to the surface. Of

one thing we can be certain. The precedent of submitting in the hour of crisis to an impartial tribunal appointed by the Mayor and backed by public opinion the most vital conflict of principles that could arise in industry will never be forgotten.

CHAPTER XVIII

INFERENCES

THE two assumptions made at the end of Chapter VII would seem to be fully established:

1. *Given institutions for preserving law and order in industry and for improving the welfare of the industry, the enterprise will prove valuable to employer and worker alike, provided it is carried out in a spirit of mutual helpfulness and with a recognition of the business factors in the joint problem. Given leaders on both sides who trust each other, the underlying spirit of the institutions will find expression in day to day progress.*

2. *Let either side seek to impose its will upon the other by coercion; let either side play unfair, and the institutions—however well planned—will crumble and fall.*

The process is slow, too slow for impatient people, but the faith of the framers of the Protocol is not wholly misplaced. The line of direction in the way of bringing a better peace and a higher welfare in industry, is shown to be in the clearer recognition of the underlying principles of judicature and parliamentarism. In other words, that *reason and debate with impartial tribunals (voluntarily selected) furnish the way out.*

Experience in the cloak situation demonstrates conclusively that the faith in collective bargaining is justified and that the system is practicable, provided adequate machinery is established and there is leadership on both sides fully expressing the spirit of the arrangement.

What can be done then to facilitate the making of collective agreements generally? The failure "to recognize the union" brought upon the head of young Mr. Rockefeller criticism not only from trades unionists, but from those who undertook to speak for the public. But Mother Jones found in half an hour that it was not from greed that Rockefeller spoke. She found that he was human and that there was underlying his opposition to trades unions a genuine desire to improve the conditions of all workers, and particularly the Colorado mine workers. His refusal to accept personal responsibility for conditions in the mining camps in Colorado was criticized by the public, of course.* But while this chapter is being written he is in Colorado with the assistance of an industrial expert,† engaged now in meeting this personal responsibility, and in devising machinery recognizing the right of the workers to have their grievances redressed and to have their standards improved. The machinery, it may be noted, is similar to

* See John Fitch's article in *The Survey*, August 21, 1915.

† Mackenzie King.

the machinery outlined in Chapter VI. Representatives of the workers and representatives of the employers join in investigating the facts and endeavor to arrive at an agreement. If they fail, the matter then goes to two chief representatives. The representatives of the workers are selected by the people actually employed. They are not selected through the organization of the United Mine Workers of America. Mr. King is reported to have said during Mr. Rockefeller's visit to the mines, when this method of adjusting grievances was outlined to the press:

There is to be no recognition of the United Mine Workers as a result of Mr. Rockefeller's visit to Colorado. Our new system of welfare work under which employees are allowed to name grievance committees to protest to mine superintendents over conditions they don't like is the company's answer to demands of the union for recognition. It is democratic and successful.

The plan does not contemplate official dealings with the United Mine Workers in the same frank and open way in which the cloak manufacturers deal with the cloakmakers' union, or the Chicago clothing firm deals with the garment workers. On the other hand, it does recognize the underlying principle of collective bargaining, in that it recognizes that the workers are entitled to be organized and to deal with their employers in organized fashion; and further recognizes the necessity for

machinery for the adjustment of grievances and for the improvement of standards by juridical and parliamentary processes. *Up to the very point of dealing with the union itself*, the plan is a full acceptance of the principles underlying the Protocol. Whether or not the plan will work, remains to be seen. Already the leader of the mine workers, is reported to have said:

I believe Mr. Rockefeller is sincere. I believe he is honestly trying to improve conditions among the men in the mines. His efforts probably will result in some betterments which I hope may prove to be permanent.

However, Mr. Rockefeller has missed the fundamental trouble in the coal camps. Democracy never has existed among the men who toil underground. The coal companies have stamped it out. Now Mr. Rockefeller is not restoring democracy, he is trying to substitute paternalism for it.

I am glad to assume that Mr. Rockefeller is earnest in his desire to do something for the miners, but Mr. Rockefeller will be here only a week or two. After he is gone what then? The miners will have neither organization nor contracts to protect them. They will be at the mercy of whatever superintendent or pit bosses the company may select.

When I talked with Mr. Rockefeller in New York I told him that if he really wanted to do something for the miners he ought to talk with President White of the United Mine Workers of America and sign a contract with the organization. Yes, I mean recognition of the union. That is the only remedy which will permanently cure the trouble in Colorado. Without union recogni-

tion I fear, I gravely fear, that all of Mr. Rockefeller's efforts will count for little.*

In the report of the representatives of the employers upon the Federal Industrial Relations Commission, ten explanations are offered for employers' opposition to dealing with trades unions, viz.:

- (a) Sympathetic strikes.
- (b) Jurisdictional disputes.
- (c) Labor union politics.
- (d) Contract breaking.
- (e) Restriction of output.
- (f) Prohibition of the use of non-union made tools and materials.
- (g) Closed shop.
- (h) Contests for supremacy between rival unions.
- (i) Acts of violence against non-union workers and the properties of employers.
- (j) Apprenticeship rules.†

Perhaps the cause of more conflicts than any other of those mentioned, is the "closed shop." The "preferential union shop" established through the Protocol in 1910, would seem to furnish the *modus vivendi* for elimination of this obstacle. (e), (f) and (j) relating to the conflict between what we may call "the efficiency principle," and "control of the work," is substantially the same

* *New York Times*, September 23, 1915.

† Report of Federal Commission on Industrial Relations (1915), p. 414.

kind of issue that produced the 1915 clash in the cloak industry. The principles laid down by the Mayor's Council, and now accepted by the garment workers' union, would seem here to furnish the way out.

(b) Jurisdictional disputes, (c) Labor union politics, and (h) Contests for supremacy between rival unions, are obstacles to be overcome by strong national self-supervision and self-control of unions generally. Only the trades unions themselves can change this. It will come about when they recognize that the federationist theory will not suffice to meet the growing obligations of great national unions dealing collectively with employers. They must vest in the national Federal body power similar to that vested by the states in the Federal Government. To-day the American Federation of Labor occupies the same position with reference to its power to make good in dealing with associated employers, that the colonies occupied in dealing with other nations before we created a Federal Government.

But of the great obstacles enumerated in the employers' schedule, (d) Contract breaking, and (i) Acts of violence against non-union workers and the properties of employers, are the most serious.

As to contract breaking, trades unionists themselves are more and more coming to realize its seriousness. The employers' representatives on the Federal Commission quote from two official union journals, one the *Coal*

Age of December 20, 1913, issue by the Association of Bituminous Coal Operators of Central Pennsylvania, and the other from the *United Mine Workers' Journal*, official organ of the United Mine Workers of America, in each of which the officials clearly recognize and condemn violations of contracts by members of the union. On this point the official organ says:

I believe I am safe in saying that no problem has given them (the officials of the union) so much concern as the problem of local strikes in violation of agreements.

Thousands of dollars are expended every year in an effort to organize the 250,000 non-union miners in the United States, while hundreds of our members go on strike almost every day in absolute, unexcusable violation of existing agreements.*

And in the other, where suspension of work was resorted to in order to compel a complete unionizing of the mine:

This conduct is in direct violation of the contract, and specifically interferes with and abridges the right of the operator to hire and discharge; of the management of the mine, and of the direction of the working forces; this conduct in violation of contract on the part of the Mine Workers, as well as that mentioned in the preceding paragraph, has resulted in more than one hundred strikes during the life of our scale agreement.†

The Protocol in the cloak industry, after five years of

* Report of Federal Commission on Industrial Relations (1915), p. 420.

† *Id.*, p. 421.

operation, was terminated on account of a shop strike unmitigated in time. Why should an entire industry suffer on both the workers' and the employers' side, and why the public, because of the law-breaking of a small anarchically-minded group?

In those industries where the employers control the output and are not affected by competition, the problems of collective bargaining are simple. It makes no difference what wages the competitor pays nor what standards of labor he observes. But in those industries where the competition in labor cost is vital and determinative of success or failure in business, employers will not accept willingly the methods of collective bargaining until this competitive obstacle is overcome. This is, indeed, the crux of the difficulties in the cloak industry.

Mr. Grant, in his study of the building trades, finds the following process taking place: The employer of union men complains to the union that a competitor is allowed to go on under non-union conditions. Naturally, he feels that it is not fair to him to be obliged to observe all the union rules and regulations when his competitors are free from like restrictions. When the union's business agent comes along and complains because of some more or less important violation of a rule, the employer is apt to get angry and say, "Why don't you go after the non-union work and leave me alone?" Mr. Smith and Mr.

Jones are employing non-union men. They can underbid me on every job I estimate against them. They are not paying the wages. But you don't bother them. You keep after me. I am growing tired of it, and if something is not done soon, I shall quit employing union men." *

The same story can be told in the cloak industry. Mr. Grant says:

The argument is logical and the union business agent knows it. If he does not make some effort to stop the non-union work, another firm, probably, will be lost to the union. He is pressed by the members of his union demanding protection from the unfair competition of the non-union man, and he is pressed by the union employer who demands protection against his unfair competitor. Neither suggests violence, but if the non-union firms will not meet the business agent or discuss conditions with him, he resorts to the only expedient which appears open to him. Either the non-union men are assaulted, or an attempt is made to destroy the work.

The structural ironworkers tried both methods and the latter seemed most effective and least dangerous. In the beginning of the trouble, when the slugging of non-union men was the rule, the arrests were numerous and many convictions were obtained. The dynamiters carried on their work of destruction for five years before they were caught.†

* Report on the International Association of Bridge and Structural Ironworkers, by Luke Grant, pp. 136, 137.

† *Id.*, p. 137.

No self-respecting employers' association and no self-respecting union can resort to methods of this sort for meeting competition. We seem to be running around within two vicious circles: either (a) The Protocol employer breaks his agreement because the non-Protocol employer is breaking his agreement; or the workers break their agreement by going on strike because the employer breaks his agreement,—an attempt to cure contract-breaking by contract-breaking—Or, (b) The Protocol employer breaks his agreement because the non-Protocol employer breaks his. The union gets after the non-Protocol employer and calls a strike. Strike means violence. If the parties were perfectly frank with each other, the conversation would run something like this:

EMPLOYERS: We will make an agreement with you provided you can enforce the same standards against our competitors.

THE UNION: We are willing to obligate ourselves to do that.

EMPLOYERS: How can you do it?

THE UNION: By strikes.

EMPLOYERS: Well, your strikes without violence are not generally successful.

THE UNION: Then we will have to use violence.

EMPLOYERS: Then we can't join with you.

THE UNION: Then we'll strike against you.

EMPLOYERS: Well, your strikes against us won't be successful unless you use violence.

THE UNION: We know that.

EMPLOYERS: Well, if you use violence we will too.

THE UNION: All right, let's have it out.

Of course, no conversation of this sort ever actually takes place, for the obvious reason that neither party would be so frank, yet that the process goes on as a mental process, is too true to be disputed. As Mr. Grant says: "Mr. St. John gave public expression to views that are privately entertained by tens of thousands." *

Notwithstanding the clear understanding of what constitutes peaceful picketing, in practice it is not carried out. Mr. Grant says:

The pickets know that; so do the employers. It is not necessary that the pickets actually assault the employees who desire to enter the factory. If the pickets assemble in sufficient numbers, it is possible to intimidate those seeking employment, without actually assaulting them. But it is the fear of possible assault that brings results; not moral suasion. The "moral suasion" argument is good in the courtroom or on the public platform, but around the factory it counts for practically nothing. Every one with practical experience of conditions knows that.†

"It is better to meet the facts squarely than to dodge them by subterfuge and hypocrisy." The truth of the matter is, that if strikes cannot be conducted success-

* Report on the International Association of Bridge and Structural Ironworkers, by Luke Grant, p. 111.

† *Id.*, p. 110.

fully without violence, nor successfully resisted without violence, both sides continue to move in a vicious circle. The business factor of competition is at the bottom of the whole difficulty. Its solution is the key to the whole problem. A careful study of the experience with collective agreements in Great Britain led the Industrial Council, made up of representative employers and representative trades unions, to say:

In cases where, however, there is a considerable minority outside the Employers' Association, and the work-people's organization is not sufficiently strong to deal with such minority, there is a real danger that effective voluntary agreements cannot be maintained even as regards the majority. Where the agreement provides for a particular rate of wages (and the industry is one in which the wages-bill is a prominent factor in the cost of production) the members of the Employers' Association who are parties to the agreement, and who comply with its terms, are at a distinct disadvantage as compared with those non-associated firms who, while not being bound to pay the rate of wages fixed by the agreement, are competitors with them. The influence of such a non-complying and competitive minority is likely to endanger the continuance of the agreement, and we are of opinion that means should be provided whereby, at the request of the parties to an agreement, and after suitable inquiry, its operation should be extended to include the minority and its terms made applicable to them.*

* Reprinted in Bulletin 133, U. S. Department of Labor, Par. 47.

In the history of the reform of municipal politics, we have learned some lessons from the experiences of the last quarter of a century. The "guilt is personal" theory was carried out in the attack upon Tweed and upon Croker. With our perspective modified in the light of experience, we now realize that Tweed and Croker were merely applying to municipal affairs the general ethical standards of their own friends in mercantile affairs. The community applied a different ethical standard to municipal affairs than men applied to their own private business. We had waves of reform. The battle ranged about moral standards and their enforcement. Little attention was paid to the business standards and the administration of a city. When the reformers were swept into power, they made "reform hideous" because they failed to recognize and face the business factors in the municipal problems. It did not seem that sound financial management and efficient business administration could be squared with high moral purpose and principles. When the municipal reformers got to meeting the facts squarely and studied the factors that made for better government, they began to make real progress. The Citizens' Union established a Legislative Bureau in Albany, got at the facts, reported them to the community and then and there in New York began a steady improvement in the tone and character of legislators and legislation. The

publication of the records of the legislators made for the advancement or retardation of men in politics, according to their deserts. Similarly, the Bureau of Municipal Research found the facts in reference to municipal administration, disclosed them, and made for better understanding and sounder judgment upon issues relating to the management of the city.

Is it not possible that the social reformer needs still to learn the lesson that the municipal reformer has already learned? Industrial peace and welfare is not to be secured by acquiescence in violence as a method, nor by attacking personally individual employers, or even the whole class. Employers generally already are aware of the value of collective bargaining to society generally. They accept it in theory and in principle. What they want to know is how to run business by it. We will get more collective agreements when we solve the problem of enforcement of standards. Those who from the outside believe in the social value of joint agreements between unions and employers' associations, must not rely upon violence or law-breaking as the means for securing them. They must face the business factors squarely. When we shall do this we shall make progress,—as we did in municipal reform.

CHAPTER XIX

LAW BREAKING

To strike without orders from his union, is for the union member to break the law of his own organization. To pay under the accepted scale is for the association member to break the law of his own organization. For the employer outside of the association under a union agreement, under-payment of scale is plain violation of his pledged word.

Violations of agreements are simply the efforts of men dissatisfied with their bonds to make short-cuts through the law—the law of their own making. The employer who breaks the law invites the workers to follow his example. The worker who breaks the law incites the employer to hit back. The formula each comes to employ is,

wrong + wrong = right.

This formula is not new in industry. Two recent studies, each by trained investigators,* made under the direction of the Federal Industrial Relations Commission, confirm the impression that the lines of strength and weakness

* Report on the Colorado Strike, by George P. West; and Report on the International Association of Bridge and Structural Ironworkers, by Luke Grant.

we find in the cloak industry, are common to other industries. No truth is so completely demonstrated as the futility of law-breaking as a method of accomplishing results, whether employed by workers or by employers.

Robert Hunter says:

The problem of methods has always been a vital matter to the labor movement, and, for a hundred years at least, the quarrels now dividing syndicalists and socialists have disturbed that movement. In the Chart-ist days the "physical forcists" opposed the "moral forcists," and later dissensions over the same question occurred between the Bakouninists and the Marxists. Since then anarchists and social democrats, direct actionists and political actionists, syndicalists and socialists have continued the battle.*

After a calm study of the entire history of the labor movement, Mr. Hunter concurs with the conclusion of Morris Hillquit (now counsel for the Cloakmakers' Union). Says Mr. Hunter: "Condemning without reserve every resort to lawbreaking and violence, and insisting that both were 'ethically unjustifiable and tactically suicidal,' Mr. Hillquit pointed out that whenever any group or section of the labor movement has embarked upon a policy of 'breaking the law' or using 'any weapons which will win the fight,' whether such policy

* "Violence and the Labor Movement," by Robert Hunter, Preface, p. ix.

was styled 'terrorism,' 'propaganda of the deed,' 'direct action,' 'sabotage,' or 'anarchism,' it has invariably served to demoralize and destroy the movement, by attracting to it professional criminals, infesting it with spies, leading the workers to needless and senseless slaughter, and ultimately engendering a spirit of disgust and reaction. It was this advocacy of 'law-breaking' which Marx and Engels fought so severely in the International and which finally led to the disruption of the first great international parliament of labor, and the socialist party of every country in the civilized world has since uniformly and emphatically rejected that policy." *

In the Ironworking Industry:

Diplomacy was out of the question, so dynamite was tried. It proved to be a colossal blunder, as was the rejection of the peace terms offered in the beginning of the fight.

The campaign of violence was a failure because of the determination and financial resources of the employers opposing the union. Had the ironworkers expended the same money and energy in trying to organize the open shop men by legitimate methods, the results might have been different.†

Mr. Grant gives as one of his conclusions, that though

* Violence and the Labor Movement," by Robert Hunter, Preface, p. viii. *The New York Call*, November 20, 1911.

† Report on the International Association of Bridge and Structural Ironworkers, by Luke Grant, p. 138.

there may be found many instances where the "use of physical force has, for a time, won advantage for the side that has used it," the gains "are temporary and do not make for permanent industrial peace"; that though an employer through force of circumstances submits "to certain conditions which he believes are unjust," and the "fear of violence and the destruction of property may cause him to make terms with a union against his will and business judgment," submission through such fear or business necessity will lead him to "break from the restraint on the first opportunity." The same rule applies to workingmen. "Force may subjugate one side or the other in an industrial dispute, but it will not remove discontent. It will not establish justice."*

Before the United States Commission on Industrial Relations, the Secretary of the Industrial Workers of the World said that he believed in violence if it were necessary to accomplish a victory; that if destroying property was essential to produce the result, he was ready to join in the destruction of property. And, in justification of the views he expressed, he asserted that employers did not hesitate to use their power to oppress workers and that their action in forcing child labor, limiting the opportunities of children to obtain an education and working their workers long hours, thus

* Report on the International Association of Bridge and Structural Ironworkers, by Luke Grant, p. 139.

destroying their health and efficiency, was a brutal application of force as bad as the workers' resort to violence. Mr. Grant says that though "the views of Mr. St. John are extreme and most labor leaders will openly repudiate them," he did, in fact, give "public expression to views that are privately entertained by tens of thousands. It is *results* that the workers are striving for and the history of the labor movement proves that they have been compelled to fight for every important improvement in conditions which they now enjoy." * Again, that "Had the workers always taken the course which the letter of the law requires them to take, they would, in all probability still be working twelve or fourteen hours a day." †

In Colorado we find employers freely violating the law. If one per cent of what they are charged with by Mr. West be true, they deserve his severe condemnation. From breaking one's word and breaking the law, to condoning violence, is an easy descent, and from condoning violence to the employment of hired "sluggers" or "thugs" is the next easy step. As Mr. Grant says: "Violence grows. From 'punching the nose of a scab' openly, where he has a chance to strike back, it is only a few steps to lying in ambush for him and trying to brain

* Report on the International Association of Bridge and Structural Ironworkers, by Luke Grant, p. 111.

† *Id.*, p. 112.

him with a bludgeon." There has been a marked change (as Mr. Grant finds) in the building trades in the nature of the violence committed and in the methods used, and the ordinary workman who in former days was apt to use his fists on the head of the "scab" for the sake of "the cause," seldom does so now. "*His place has been taken by the professional thug and gunman. Violence has become commercialized and made more brutal.*"* As Mr. Grant says: "It is puerile to contend that force and violence are not accompaniments of strikes and lock-outs."† Strikes in the cloak industry, as we have seen, furnish no exception to this rule.

"On one side is the employer who rightly or wrongly believes that he is justified in refusing to accede to the demands of the workers. He recognizes that if they are not satisfied with these demands they may leave their places and he may substitute others. This is the theory of the law and the justification for organized withdrawal from employment. But this is not the whole of the matter. On the other side are the workers, who "feel they have a property right in the jobs they formerly held. That the law holds they have no such right, and that anyone who is willing to accept the conditions, shall have a right to fill the jobs, without fear or molestation,

* Report on the International Association of Bridge and Structural Ironworkers, by Luke Grant, pp. 115, 116.

† *Id.*, p. 108.

does not alter the situation in the minds of the workers. They look upon the new employees as enemies, who are taking the bread and butter out of their mouths and the mouths of their families. They cannot see the justice of the law. . . . They refuse to accept the dictum of the law and of the employer, that they no longer have any claim on their former jobs. They want the jobs, which they think are theirs. . . . What is the natural thing for the strikers to do? Prevent new employees from taking the jobs in that factory, of course. If that can be done by peaceful methods, so much the better. If it cannot, then it must be done by violent methods. The important thing is that it be done. That is the way the workers view the situation, the law to the contrary notwithstanding.” *

When they reach this point the employer feels justified in repelling their attacks by similar use of force. Thus serious industrial problems are settled by hired strong-arm men, fighting it out on the streets!

The study of these other industries helps us to understand the Protocol problem. Without peace agreements we are face to face with law-breaking, running to riot and murder. *With* peace agreements we are again face to face with law-breaking, but law-breaking of a lesser kind, though inherently of the same moral nature.

* Report on the International Association of Bridge and Structural Ironworkers, by Luke Grant, pp. 109, 110.

The experience of the cloak industry demonstrates that where large numbers of people are involved, there are bound to be breaches of faith, breaches of the law of the parties' own making. But there is clear progress. Since 1910, as we have seen, there has been nothing approaching the reign of anarchy of pre-Protocol days. On the contrary, the gravest issues arising in industry have been met and disposed of in parliamentary and juridical fashion. *There has been no general strike since 1910.* Both sides have been driven by the force of bitter experience to prefer the method of law and order, even when under ordinary circumstances, either might have preferred to test the other's strength. Yet it would be a perversion of the truth if we failed to schedule those manifestations of anarchy that still persist, and persist in spite of provision for orderly redress of grievances.

The anarchy that we are here now considering, however, is not the anarchy prevailing only in industrial relations nor in immigrant industries. It is,—to quote a keen writer on American politics—indicative of an “insidious and dangerous moral disorder,” running through the whole of American life. It is, indeed, the “hypocritical homage to a law” which the American democracy does “not intend to obey except when convenient.”

The Frank murder took place in Georgia. It was an American outrage. The offenders were neither immi-

grants nor sons of immigrants. It was "in a deeper sense only an unusually sharp and shameless illustration of a besetting weakness of the American democracy." The local communities in our country "have wished more than anything else to be left alone"; though they did not attempt to get along without law, they did in fact wish "*freedom to do things in their own way, no matter whether that way was right or wrong.*" They promoted law "into a kind of disembodied coadjutor of King Demos. *But they wanted on suitable occasion to be able to exempt themselves from the reign of the law.* . . . The people set up an impersonal king, whom they could unite to worship, but whom they did not have to obey. . . . The American democracy submitted to legalism only because legalism did not forbid a liberal measure of license outside of the law. . . ." And this writer observes that "Instead of paying hypocritical homage to a law which it did not intend to obey except when convenient, the future American democracy must above all be sincere and thoroughgoing. It cannot afford to place a pretender on a throne in order to have a plausible excuse for escaping now and then from his authority." * No, anarchy and lawlessness in our country are not confined to workers or to employers. It is in the very atmosphere in which we live.

* Georgia and the Nation, *The New Republic*, September 4, 1915, pp. 113, 114. (Italics ours.)

The mere making of collective agreements or the invention of new industrial appliances for redressing grievances or for establishing law and order in industry will not wholly eliminate this anarchical tendency. Protocols cannot bring to industry the moral backbone, nor invest it with the moral fiber lacking in American life generally. While its philosophy will gradually enter the dim recesses of minds already saturated with the strong drink of license, until employers and workers generally learn that drunkenness does not pay, temperance will not become a steady daily diet. The prime value of Protocol institutions lies in their educational influence upon those actually engaged in the work. It takes time and much suffering, but it leads more and more to an acceptance of law and order as something binding in and for their own sake. We are, of course, not in this instance speaking of law in the sense of organized legalism or formalism. We are here dealing with law of the parties' own making, *i. e.*, the law of the contract, freely made, and we are speaking of defaults in the observance of one's own obligations. The employer who "cancels his orders" is as low in the scale as the worker who goes out on "shop-strike" in violation of the Protocol. If we, in America, would not exchange our political philosophy with the Germans, we must get the discipline of "*est ist verboten*" in some other way. We take the position that a pledge or a treaty is not a mere "scrap of paper." This is the

standard by which we in America judge the great international crisis now before us. Yet, we ourselves, put law "as a pretender on a throne in order to have a plausible excuse for escaping now and then from his authority."

The lawyer in these industrial situations may perform his duty as advocate for either side in such controversial matters as are sure to arise. He may invent new machinery to eliminate friction. He may join in carrying out the policies assented to by both parties and in finding solutions for joint problems. But beyond all these things, the lawyer's job primarily is one of education in first principles—the principles of law and order in democratic society. He must emphasize the sanctity of the pledged word and the adopted rule. He must secure more and more the ready acceptance of the slower, orderly way of redressing wrongs. The "short-cut" is a snare and a delusion. It leads to the woods.

CHAPTER XX

THE WHITE PROTOCOL LABEL

WITHIN six months after it had gotten under way, the Board of Sanitary Control determined to encourage the maintenance of sanitary conditions by awarding a certificate to employers complying with its standards. In effect it was a "good ticket" for good behavior. This certificate was of value. It gave a sense of personal pride to the employer. When the system had been in operation for a short time, it occurred to me that if instead of a good ticket for the shop, we could have a good ticket for the *garment*, it would have a greater value. I assumed that there were enough women who would prefer to wear clothes made under sanitary and fair conditions to give the preference to such garments. At present, the power of the consumer is not effectively utilized to affect sanitary and other working conditions. My thought was the same in general as the one underlying the National Consumers' League. Indeed that organization was quick to encourage us by offering coöperation. Instead of a union label under the control and disposition of the union, it seemed to me that a joint label issued under the supervision of the triangular

board, the representatives of the public, the workers and the employers, could be transformed into a commercial as well as a social asset. It should not be made compulsory. It should be available to all manufacturers who meet the conditions underlying its issuance.

Then, if the women of the country instead of expressing sympathy with the garment workers only at times of strike, could be induced regularly to apply their power at the really effective point, namely the moment of purchase of the garment, we should secure a really practicable way of meeting the competition of the below standard manufacturer. Before the National Conference of Charities and Corrections at Cleveland in June, 1912, I laid the matter out as follows:

The responsibility for the existence of conditions that are unsafe for the worker is a responsibility resting upon the entire community. It should be shifted neither to the shoulders of the employers nor to the workers, nor to both combined. The public itself is responsible. If women's wear is manufactured under such conditions as to make for unsound men and women, society as a whole is responsible. It seems to the writer that before we get right standards of living for the community, the whole basis of purchase by the consumer must be changed, and he believes that the time is almost at hand when this would seem practicable. The present basis of purchase is, as it has been for centuries, almost wholly a matter of price and adaptability to use. The question that the buyer asks is, how cheap is the garment and does it fit.

The result of this is a demand on the part of the public for "bargains" and inevitably leads to an attitude on the part of the retailer of entire indifference to the conditions or surroundings under which the garment is made. The most scrupulous buyer of a department store must shut his eyes to the environment under which the garment is made. He concerns himself solely with the question of price and the style, texture and work in the product. Whether it contain germs of disease, or has injured the operative in the making, must concern him not at all. The result is pressure upon the manufacturer from the consumer's end—to manufacture as cheaply as possible, regardless of the conditions under which the worker operates, and from the same consuming public pressure from another direction—higher wages and shorter hours for the worker. There is justice in the plea of the enlightened manufacturer that he is being squeezed between two opposing forces and that he is penalized whenever he attempts to raise conditions. The remedy would seem to be at hand if all of the parties would agree to it, that is, the employer, the employee and the public. It is this. Whenever complete and regular inspection of an industry is under way by all three parties, as in the cloak industry, and certificates are issued to shops maintaining adequate standards, the chain of evidence should be carried one link farther—the *garment itself* should be certified by the Board, so that the consumer will know what garment is made under "Protocol" conditions and what is not. An extensive advertising campaign, conducted by both parties, would inevitably educate the public to a realization of its responsibility for the maintenance of unsanitary conditions. The responsibility from consumer to producer would be made direct and real and could not be evaded. A label on each

garment would furnish the purchaser with unmistakable evidence of its conformance or non-conformance with the standards of living maintained by the best in the industry. Already in the cloak industry, the union is making a campaign throughout the country for the exclusion from the industry of what is called "Non-Protocol" cloaks; that is to say, for the exclusion of garments made in factories that have not come under the Protocol. This work is ineffective now because there is no way of furnishing the consumer with prompt and satisfactory evidence of the facts concerning each garment. The retailer to-day is not called upon to distinguish between "Protocol" cloaks and "Non-Protocol" cloaks. Looking at the situation critically, it would seem that the work of controlling the *label* is no more difficult than the work of controlling the shop. It is a mere extension of the principle of certification.*

The idea gained favor with manufacturers and union leaders. When it was first presented, it met with the general approval of the leading cloak manufacturers. It was opposed by the union leaders. Gradually, they began to see its value, until in 1913, when in drawing the Protocol in the dress and waist industry, I secured the acceptance of both sides to the following:

To make more effective the maintenance of sanitary conditions throughout the industry, to insure equality of minimum standards throughout the industry, and to guarantee to the public garments made in the shops certificated by the Board of Sanitary Control, the parties

* "Control of Sanitary Standards," published by National Conference of Charities and Corrections, 1912.

agree that there shall be instituted in the industry a system of certificating garments by a label to be affixed to the garment. Recognizing the difficulties of working out the details of such a plan at this time, but believing that the plan has been sufficiently developed and considered in the Cloak Industry, they believe that a complete plan can be worked out in the Dress and Waist Industry within a year. To this end each party agrees to cooperate to the full extent of its power in the formulation and effectuation of a system for the certification of garments adequately safeguarding the employers, the workers, and the consuming public.*

In 1915, the Board of Arbitration in the Cloak Industry, reviewing the difficulties of that industry, and mindful of the necessity for equal enforcement of standards through the industry, said:

We are dealing specifically with the problems of only a part of the garment trade; but your problems are in large measure the problems of all industry. You are leaders in the attempt to work out these problems, and are entitled not only to the sympathetic consideration, but to the help of the rest of the community. Protocol conditions are conditions which the community desires to have established generally. There are scarcely any, whether employers or employees or consumers, who do not wish to accomplish exactly what those who are in this industry are seeking to accomplish by way of bettering the relations of employer and employees. Some method ought to be devised of enlisting the cooperation of the community in the great and difficult task of working out

* Protocol of Peace in the Dress and Waist Industry, January 18, 1913.

these problems. The Protocol label has been suggested as one of the means of accomplishing such coöperation. However valuable the suggestion, it is obvious that its practical application is a matter of great but not of insuperable difficulty.*

The label has not yet been established. It waits for public sentiment. It will not bring the millennium. Its efficacy will depend almost entirely upon the consuming public. If the women of the country would to-morrow with one voice say, "We will not wear clothes that are made under unsanitary conditions and unless we are certain that the workers who have them receive proper wages and fair treatment," they would accomplish in twenty-four hours a bloodless revolution. They would, by this one act, save enough waste in strikes and lock-outs, ultimately to reduce the cost of their garments and would, at the same time, raise working conditions higher than all the state and local Factory and Health Boards have done in twenty years. No manufacturer could afford to do without the label—no department store could sell any other than labelled garments. We should be certain, too, that neither association nor union would be unreasonable or arbitrary or anarchical. The public would be represented and would bring pressure to bear where it was justified. The Board of Arbitration would have a sheriff, and the withdrawal of the label (after fair hearing)

* Decision of Board of Arbitration, January 21, 1915.

would be sufficient enforcement of a decision, and would be as effective against the non-association employer as association discipline is now effective against the association member.

In Chapter VII, in reviewing the Chicago experience, we set down the following tentative hypothesis:

The consumer is an important factor in the problem. Of course, care must be taken to prevent fraud in the use of the label, and to see to it that it acquires its full value through thorough and systematic advertising. If it received the support of the women of the country the additional fee for each label would bring in more than enough to pay for all the advertising and the maintenance of the machinery of administration.

To-day there is no machinery for enforcing standards throughout the entire industry. The shop strike, the general strike is futile.

In the August *Garment Worker* (immediately following the adoption of the recommendations of the Mayor's Council) appears the following:

EQUALIZING CONDITIONS THROUGHOUT THE COUNTRY

The need of equalizing conditions throughout the country is as great as ever, and President Schlesinger intends forthwith to start on an organizing tour to Middle Western centers of our industry to supervise urgent movements for better conditions.*

* *The Ladies' Garment Worker*, August, 1915, pp. 5, 6.

Who should be against the Protocol label? Those who believe in the power or force theory—those unionists and those employers who each have the same fear—the fear of the consequence of joining permanently in the establishment of a joint asset and who prefer “the good old” pre-Protocol days? Of course, there may be department store managers so short-sighted as to fear the consequences to them of this control of the industry by the worker, the manufacturer and the consumer. But the wise and far-sighted department store manager will think differently. It took a long time for advertisers of meritorious wares to realize that telling the truth had a commercial value. It has taken a long time for advertising mediums to realize that publishing truthful advertisements was of commercial value. Now we see a New York daily building up its entire advertising power through: first, its guarantee of the complete truthfulness of representations made in its columns by advertisers, and secondly, by a campaign generally against fraudulent advertising. Another is specializing in foods, giving the strength of its approval to such as stand the test of its own investigation and attacking those who fall below standard. The first department store head who will thoroughly realize the commercial value of squarely meeting the demand of the consumer for garments made under sanitary and fair conditions, will secure a reputation and standing that will put him in advance of his

competitor. The first mail-order house that offers to the country shirt waists certified to by representatives of the workers, the employers and the consumers as having been made under sanitary and fair conditions, will establish a tremendously valuable clientele. A little specialty house in the retail dry goods district of New York found it to advantage to put in its advertisements: "A member of the Dress and Waist Manufacturers' Association. Garments made under sanitary conditions."

The White Protocol label is more than a consumer's label. It is a producer's label. If it be true that more than seventy-five per cent of the garments are worn by working men and working women, are they not interested in the maintenance of sanitary and fair conditions of work? It is more than the union label, for the reason that it is not a dispensation by the union, based upon a determination made by the union.

Here, then, is something to consider and weigh. If the public is interested in preserving peace in industry and securing the welfare of working people, why should it not make its great power effective? The Chicago brand gave to the clothing concern the power to meet its competitors effectively. Why not create a brand that consumers will award to those who observe the law and thus make society's aim square with the aim of legitimate business?

CHAPTER XXI

A FEDERAL INDUSTRIAL COUNCIL

STUDY of the proceedings and report of the Industrial Council of Great Britain* led me to the conviction that at the root of the difficulty in both the making and observance of joint agreements lay the problem of equal enforcement of standards throughout the industry. I found that the Council had considered various methods proposed, and that on the whole, the best opinion seemed to be (as quoted on p. 202) in favor of extending the standards by law to cover the entire industry. J. Ramsey MacDonald in 1912 introduced in Parliament a Bill (Appendix E) covering the Port of London, which provided that where an agreement was "come to voluntarily" by employers and workmen, and covered sufficient numbers, the standards of wages, or hours, or conditions of employment should be "the implied terms of every contract for employment of a workman in the Port of London." The bill, though hardly in form to meet the requirements of our Constitution, furnished the basis for a tentative recommendation I submitted to the United

* Bulletin 133, U. S. Department of Labor.

States Industrial Relations Commission in 1914 (Appendix F).

It seemed to me that if, under the jurisdiction of Congress over interstate commerce, we could create a national industrial board, constituted of leading trades unionists, employers and public men and women, we should find a method for applying intelligently and constantly to trade agreements the force of public opinion and at the same time utilize Federal power in making such agreements "voluntarily come to" binding upon the unscrupulous and illegitimate minority employer. Such a board could at any time, at the instance of either party, review the conduct of both parties and make findings based thereon. If the agreement were in the public interest and the Board so certified, its certificate could be made presumptive evidence of good faith protecting both parties against harassing litigation. In addition, the failure of either an employers' association or a trades union to observe the agreement would result in public disapproval and be sufficient ground for refusal to approve subsequent agreements. The trades union or employers' association which observed treaties would be encouraged, and the other kind gradually driven out. In addition, to make the standards "voluntarily come to" of a clear majority of the industry on both sides binding upon all in the industry and to do it by law, instead of by force—after full opportunity for hearing to the minority—seemed to

be a more rational way of getting and maintaining decent standards. As to hours of labor, such action by the Board would be in the nature of legislation fixing conditions of labor, and as to minimum standards of wages would be in nature the same as the action of minimum wage boards. As to the constitutionality of such an act with reference to wage standards for men, though I am familiar with the decisions adverse, I believe that even here the time is coming when this kind of legislation will be upheld. (Although the courts have sought to distinguish between men and women upon the ground of the physical differences in sex, there seems to me to be no inherently sound legal reason for denying to men the same protection that is granted to women.*) Since the recommendation was made, there has been created the Federal Reserve Board, with broad supervisory powers over our banking institutions, and a Trade Commission with similar supervision over trade agreements. We have already come to the time when we freely acknowledge the right of the entire country to insist that no part shall break down through interstate commerce the living standards necessary for the protection of the whole people. This is the basis of our Federal pure food and health laws, and we shall ultimately apply the same reasoning to laws regulating the working conditions of

* The principles of "Fatigue and Efficiency" (Goldmark) apply to men as well as to women.

labor. If we give the principal factors in each industry, *i. e.*, the majority employers and the majority workers the first say, by permitting them to come to joint agreements voluntarily, and then guarantee them against the undermining of standards by unscrupulous competitors, we shall be rendering the entire country a real service. We shall hasten the day of industrial welfare as well as industrial peace. The outline submitted to the Industrial Relations Commission is not submitted here as a final plan, nor is it the purpose of this chapter to make immediate propaganda for it. I am conscious that we are a long way off from an exact piece of legislation upon the subject. But the realization that it took us more than half a century to work out sound currency legislation makes me confident that some day there will come Paul Warburgs into industry who will find the means of preventing the losses of industrial warfare as in the enactment of the Federal Reserve Act we have prevented the losses of financial panics. The suggestion is reprinted for reflection. If it inspires others to think in the same general direction, it will have accomplished its purpose.

We must not rest content with present alternatives.

We must invent new ways. If we have not yet found the right ones, we must try until we do find them. But we must not wince if the facts as we face them are not wholly to our liking.

CHAPTER XXII

VISION AND EFFORT

THE man of reflection, detached from interest or activity in a given social or political situation, has the advantage of long-range perspective and by virtue of his detachment and disinterestedness may be a safe guide. But if the man of action pays the penalty of short range vision, he at least has a firmer base in the intimate knowledge of the factors of the situation. The true combination for statesmanship is, of course, to be found in an alignment of both.

Of the students of industrial problems, those who speak with the authority of deep reflection agree that progress lies in the direction of greater industrial democracy. John Graham Brooks, after a review of American Syndicalism, writes that the remedy for lawlessness and the way to peace and welfare of all concerned is in "the open, declared purpose to admit labor to management first at safe and possible points"—note the qualifying words—"with all that this means of banished secrets; to admit it fearlessly and with no reserves as far as *labor proves its fitness*;"* we then and there connect

* Italics ours.

ourselves with the coöperative régime." This, he says, "does not close the fist, it opens the arms." And to adopt this policy of including labor "in the control of business" requires not only that we give it "every opportunity of training to this end" but will require "the severe schooling of a century." I agree with him in his estimate of time. "But," says Professor Brooks, "every strong man who openly sets his face that way, who tries consentingly and forbearingly to prove the policy wise is the helper to whom we look." *

Two other clever students, Englishmen (Watney and Little) write in a book entitled "Industrial Warfare" that "Industrial unrest cannot be treated as an isolated irresponsible manifestation." True. . . . "it assumes specific forms according to its local conditions, and more particularly to its method of treatment by those who have the power to influence it." So we find in the experiences dealt with in this book. "Nothing," say they in England, "can do more harm to the body politic than a policy of unreflecting and intractable hostility from above to the impulses and aspirations from below; you cannot with safety—and the truism is so apt that it barely needs apology—sit on the safety valve." Quite right. Now observe the complementary thought: "At the same time, nothing can do less harm to it than the policy of unreflecting and uncompromising hostility from below

* John Graham Brooks: "American Syndicalism," p. 252.

to the just claims and due recognition of the great directing and controlling influences in the business of the country, provided the latter realize that, with the development of thought and the advancement in the popular ideals of happiness and comfort, has come a greater and legitimate desire on the part of the worker for better all-round opportunities for both himself and his class.”*

Mr. Brandeis certainly has had opportunity for both long and short range observation. Called as an expert before the Industrial Relations Commission, he expressed the opinion that industrial unrest never could be removed, “and fortunately never can be removed, by mere improvement of the physical and material condition of the working man”; that we must bear in mind all the time that no matter how much one may wish for material improvement and must desire it for the individual’s comfort, “*we are a democracy*” and therefore, “*we must have, above all things, men.*” And, accordingly, he believes that it is towards the development of manhood that any industrial or social system must be directed. Not only are we committed, in our country, Mr. Brandeis told the Commission, to “social justice in the sense of avoiding things which bring suffering and harm and unequal distribution of wealth; but we are committed primarily to democracy, and the social justice to which we are headed is an incident of our democracy, not an

* Charles Watney and James A. Little: “Industrial Warfare,” pp. 8, 9.

end itself. *It is the result of democracy, but democracy we must have.*" * Therefore, said Mr. Brandeis, we must recognize industrial democracy "as the end to which we are to work." And that means to Mr. Brandeis what it means to Professor Brooks, "the problems are not any longer, or to be any longer, the problems of the employer. The problems of his business—it is not the employer's business." † This same thought was in the minds of a group of ministers and leading citizens of New York, ‡ who said to a group of (men's, not women's) clothing manufacturers in 1912 who refused to confer or arbitrate with the union: "You seem to think that your particular business, and the capital you have therein invested, should be your main consideration; whereas the public, while desiring your welfare, insists also that you shall take such steps as are necessary to secure conditions which are now recognized as indispensable in those industries where employers and employees are at peace. Such being the present state of the public mind, is it not for your own interest to be more forward in taking such steps as the public now expects of you?" § Mr. Brandeis said also—doubtless influenced by his experience as

* Italics ours.

† Report of Federal Commission on Industrial Relations (1915), pp. 83-84.

‡ Drs. George William Douglas, Frank Oliver Hall, George U. Wenner, Henry E. Cobb, John Haynes Holmes, Rabbis Samuel Schulman and Stephen S. Wise.

§ *Evening Post*, February 20, 1913.

chairman of the Arbitration Board in our industry—"The union cannot shift upon the employer the responsibility for the conditions, nor can the employer insist upon solving, according to his will, the conditions which shall exist; but the problems which exist are the problems of the trade; they are the problems of employer and employee."* He was repeating here what he had frequently said as chairman of our Board of Arbitration. The ministers and leading citizens said to the clothing manufacturers: "And why should you not organize also a proper system for settling the daily questions between your workers and yourselves in a manner which is thoroughly modern, and takes cognizance of the trade conditions, both here and in competing markets, which must be considered in order to preserve and develop your business in this city, of which all true citizens desire to be proud? And further, when questions arise which are too large to be settled by this method in your own shops, why should you not arrange to refer them to a board operating somewhat on the arbitration system of the Chamber of Commerce?"†

Thus is set in apparent conflict the view of the man of vision with the man of daily business. The man of vision sees not in the remote distance, but in the immediate present the approach—the inevitable approach

* Report of Federal Commission on Industrial Relations (1915), p. 84.

† *Evening Post*, February 20, 1913.

of industrial democracy. The man of daily business sees ahead only the shoals and rocks upon which industry may be wrecked. How shall we reconcile them? For reconciled they must be if progress is to be made. Reconciliation of these views is statesmanship in industry. It was Lloyd George's job in England—a thankless one at best. We shall be obliged to record repeated failure before we succeed.

Writing in 1866 (just after our Civil War), Lord Acton, realizing that “the experience of the Americans is necessarily an impressive lesson to England,” wondered whether the Americans would be successful in reversing “the verdict of history,” “that that which ancient Rome and modern France attempted and failed to accomplish is really impossible; *that Democracy, to be consistent with liberty, must subsist in solution and combination with other qualifying principles, and that complete equality is the ruin of liberty, and very prejudicial to the most valued interests of society, civilization and religion.*” *

* If they (the Americans) could demonstrate that to be possible which was deemed a chimera, because it is contradicted by the experience of ages,—if they showed us that the objects aimed at by our political and social system may be enjoyed still more amply without the penalty which Europe has always paid, in the shape of so much iniquity and so much suffering, by irresponsible authorities, sanguinary wars, and wanton injury, in the oppression of class by class, of race by race, and of religion by religion,—in the elaborate, deliberate, intentional degradation of the weaker party, for reasons of state, or religious zeal, or by the pride of blood, or by the blind and resistless action of superior wealth and force—if they could exhibit to the world the spectacle of a country

In fifty years the idea of political democracy has found deeper roots in England than Lord Acton ever expected. In the Far East, in China, political democracy as an ideal takes root but fails to live. If recent experiences have taught us anything, it is the lesson that to apply ideals, without taking account of the actual facts, spells failure. Our own American political scientist, called as expert adviser by the Chinese Government, says: "China's history and traditions, her social and economic conditions, her relations with foreign Powers, all make it probable that the country would develop that constitutional government which it must develop if it is to preserve its independence as a State more easily as a monarchy than as a republic." * But we need not go to China for our lessons in the failures of democracy. We have failed in municipal politics and we know that we have failed. We are gradually learning to understand why we failed. We have failed in state politics. Our late senior Senator † in his keen analysis of the effect of "invisible government" upon state management furnished no new information

as extensive as Russia, as secure from aggression as France, as intellectual as Germany, as free and as obedient to law as Great Britain, cursed with no restrictions on personal freedom, without fleets or armies, without pauperism or national debt,—if, in short, America could give the light without the shade of political life, then I believe that the venerable institutions of European polity would go down before that invincible argument. Lord Acton: "Historical Essays and Studies," Chapter IV; "The Civil War in America," pp. 125, 126.

* Prof. Frank L. Goodnow: *New York Sun*, September 27, 1915.

† Elihu Root: Constitutional Convention, New York, 1915.

to the reformer who has actual experience in politics. Frankly facing all of these known failures in political democracy, we go on with our faith as we did before Lord Acton wrote, and as we did afterwards—sometimes we go on with but Stevenson's

Half of a broken hope for a pillow at night
That somehow the right is the right
And the smooth shall bloom from the rough.

With our failures in industrial democracy, we act differently. If the scheme does not work one hundred per cent perfect, we abandon our whole faith. Why? There is a difference. We accept political democracy as something fixed; something here and now, never to be abandoned as an ideal and to be wrestled with in practice; to be worked out at whatever cost; and we accept industrial democracy as nothing but a dream of the future. We have no fixed public policy on the subject. Not until individual men are thrown into the vortex of a huge industrial conflict—until they grip the very vitals of industry—do they realize the nearness of a new order of industrial society and their utter unpreparedness for it. The average employer knows nothing about "industrial democracy." To him it spells nothing but Socialism, with a capital "S." "Let everybody mind his own business and I will mind mine," says he. The intrusion of social workers, literary gentlemen, religious leaders, into

his labor difficulties, is to him utterly uncalled for. "We know our business better than these ladies and gentlemen. Why don't they leave us alone?" The truth is that the employer who knows nothing and cares less about "industrial democracy," and sticks to it, is the most consistent and logical of all. He starts with but one simple object—that is, profits—and he persists. Labor, like material, is for him regulated by the "law of supply and demand." If he drives hard bargains with his customers, he sees no reason for not doing the same with his workers. When the workers organize into a union it is against his interest. It gives them a power with which to oppose his power. Therefore, quite consistently, he turns his attention to preventing the formation of such an organization. And if spies or law breaking are necessary to accomplish the result, why, of course, he must not be squeamish about it. It is the employer of imagination, of education, who carries, in industry as elsewhere, the pains of birth in bringing forth new ideas and new institutions. For example, once he accepts the principle that workers, like employers, have the right to organize and deal collectively, he is gone—as we have seen both in Chicago and in New York. If he starts forward, he can never turn back, no matter what the cost. And he will find cold comfort in much of the company of his colleagues.

Recent studies are to the effect that the savage is our

mental equal. "One may display as much intelligence in tracking a kangaroo through the bush as in solving a problem in algebra."* The difference between the civilized man and the savage is in the imagination. "Civilized races are progressive and their systems of thought and life are changing, but the savage prefers to remain fixed in the culture of a long past age, which, conserved by the inertia of custom and sanctified by religion, holds him helpless in its inexorable grasp. Imagination rules the world, and the world to the savage is dominated by a nightmare of tradition. . . ." When a man of imagination steps in among the Fijis, the wonder is that they do not eat him alive. It is the man of imagination in industry whom we must help, whose burdens we must lighten, for upon him depends much of the progress to be made in the immediate future. Let us then frankly admit that we are, in truth, unprepared for the new order of industry. Let us seek, so far as practicable, to avoid repetition in industry of the costly failures of democracy in politics. We do not need the lesson of far-off China to teach us. *It does not pay in the long run to travel faster than existing economic and psychological conditions will warrant.*

If the United States Commission on Industrial Relations had but given us a full and complete survey of the experiences of this country in collective bargaining

* "History of Fiji," Dr. A. G. Mayer, *Popular Science Monthly*, 1915.

to match the report of the Industrial Council of Great Britain upon the same subject, we should have had a larger background of experience for our perspective. However, the experiences reviewed in these pages may at least contribute an approximate inventory of failure and success in one difficult and complex industry from which we may learn. Let us enumerate roughly:—

The General Strike eliminated.

The "Closed Shop" eliminated.

The judicial and legislative method of determining controversy accepted.

The value of organization on both sides appreciated.

Better sanitary and working standards.

Success in joint effort where the effort is whole-hearted.
Failure where it is not.

Success in applying new institutions based upon Law and Order.

Elimination of the "right to the job."

Recognition of "efficiency and economy as a duty of worker as well as employer in industry."

Failure to equalize competitive labor conditions.

Failure to eliminate sporadic shop strikes.

Failure to secure whole-hearted and mutual endorsement of the plan by both organizations.

In 1910 the cloak industry of New York fights out the "closed shop" issue. The *modus vivendi* of the "preferen-

tial union shop" then adopted makes peace possible in Chicago, in Boston, in Philadelphia and in seven or eight other industries.

In 1915 the cloak industry of New York fights out the battle over "the right to the job." The solution (the findings of the Mayor's Council of Conciliation) furnishes the basis of settlement in other cities.*

Thus the industry suffers that others may progress. Its very failures help to make for progress. The verdict must be that the experiences were successful—are now successful. If the business results were not as good as the sanitary and social results, it meant that we had not yet found the complete harmonization of all the ideals nor the perfect *modus vivendi*. But shall we not be encouraged by our great successes (considering the difficulties) almost beyond our dreams?

The further experiences of this industry, like those of the past five years, must be of profit to the industries of this and other countries. *Effort* must be made—constant *effort*. Vision and faith alone will not suffice. Invention of new methods—constant attention to all the factors of the problem—or we shall go back as certain as without similar effort we shall go back in our politics. There is one safe rule—not to deceive ourselves. Bravely to set failure side by side with success. And when all is in-

* Chicago agreement, *Women's Wear*, September 27, 1915—Boston agreement, *Women's Wear*, September 22, 1915.

ventoried, both the failures and the successes, to retain the faith of the men of vision—for blundering though our steps may be, their light does shine and must lead on. We *shall* learn by doing. We cannot go back to savagery in industry, whatever it costs to go forward.

APPENDIX A

TEXT OF THE PROTOCOL AGREEMENT

Made September 2, 1910

PROTOCOL of an agreement entered into this 2d day of September, 1910, between the Cloak, Suit and Skirt Manufacturers' Protective Association, herein called the manufacturers, and the following locals of the International Ladies' Garment Workers' Union, namely: Cloak Operators' Union No. 1, Cloak and Suit Tailors' No. 9, Amalgamated Ladies' Garment Cutters' Association No. 10, Cloak and Skirt Makers' Union of Brownsville No. 11, New York Reefer Makers' Union No. 17, Skirt Makers' Union No. 23, Cloak and Skirt Pressers' Union No. 35, Buttonhole Makers' Union of New York (Local No. 64), Cloak and Suit Pressers of Brownsville No. 68, hereinafter called the unions.

Whereas differences have arisen between the manufacturers and their employees who are members of the unions with regard to various matters which have resulted in a strike, and it is now desired by the parties hereto to terminate said strike and to arrive at an understanding with regard to the future relations between the manufacturers and their employees, it is therefore stipulated as follows:

First. So far as practicable, and by December 31, 1910, electric power be installed for the operation of machines, and that no charge for power be made against any of the employees of the manufacturers.

Second. No charge shall be made against any employee of the manufacturers for material except in the event of the negligence or wrongful act of the employee resulting in loss or injury to the employer.

Third. A uniform deposit system, with uniform deposit receipts, shall be adopted by the manufacturers, and the manufacturers will adopt rules and regulations for enforcing the prompt return of all deposits to employees entitled thereto. The amount of deposit shall be \$1.

Fourth. No work shall be given to or taken to employees to be performed at their homes.

Fifth. In the future there shall be no time contracts with individual shop employees, except foremen, designers, and pattern graders.

Sixth. The manufacturers will discipline any member thereof proven guilty of unfair discrimination among his employees.

Seventh. Employees shall not be required to work during the ten legal holidays as established by the laws of the State of New York; and no employee shall be permitted to work more than six days in each week, those observing Saturday to be permitted to work Sunday in lieu thereof; all week workers to receive pay for legal holidays.

Eighth. The manufacturers will establish a regular weekly pay day and they will pay for labor in cash, and each piece worker will be paid for all work delivered as soon as his work is inspected and approved, which shall be within a reasonable time.

Ninth. All subcontracting within shops shall be abolished.

Tenth. The following schedule of the standard minimum weekly scale of wages shall be observed:

Machine cutters.....	\$25
Regular cutters.....	25
Canvas cutters.....	12
Skirt cutters.....	21
Jacket pressers.....	21
Underpressers.....	18
Skirt pressers.....	19
Skirt underpressers.....	15
Part pressers.....	13
Reefer pressers.....	18
Reefer underpressers.....	14
Sample makers.....	22
Sample skirt makers.....	22
Skirt basters.....	14
Skirt finishers.....	10
Buttonhole makers, class A, a minimum of \$1.25 per 100 buttonholes.	

Class B, a minimum of 80 cents per 100 buttonholes.

As to piecework, the price to be paid is to be agreed upon by a committee of the employees in each shop, and their employer. The chairman of said price committee of the employees shall act as the representative of the employees in their dealings with the employer.

The weekly hours of labor shall consist of 50 hours in 6 working days, to wit, 9 hours on all days except the sixth day, which shall consist of 5 hours only.

Eleventh. No overtime work shall be permitted between the 15th day of November and the 15th day of January or during the months of June and July, except upon samples.

Twelfth. No overtime work shall be permitted on Saturdays except to workers not working on Saturdays, nor on any day for more than two and one-half hours, nor before 8 A. M. nor after 8.30 P. M.

Thirteenth. For overtime work all week workers shall receive double the usual pay.

Fourteenth. Each member of the manufacturers is to maintain a union shop; a "union shop" being understood to refer to a shop where union standards as to working conditions, hours of labor and rates of wages as herein stipulated prevail, and where, when hiring help, union men are preferred; it being recognized that, since there are differences in degrees of skill among those employed in the trade, employers shall have freedom of selection as between one union man and another, and shall not be confined to any list, nor bound to follow any prescribed order whatever.

It is further understood that all existing agreements and obligations of the employer, including those to present employees, shall be respected; the manufacturers, however, declare their belief in the union, and that all who desire its benefits should share in its burdens.

Fifteenth. The parties hereby establish a Joint Board of Sanitary Control, to consist of seven members, composed of two nominees of the manufacturers, two nominees of the unions, and three who are to represent the public, the latter to be named by Meyer London, Esq., and Julius Henry Cohen, Esq., and, in the event of their inability to agree, by Louis Marshall, Esq.

Said board is empowered to establish standards of sanitary conditions, to which the manufacturers and the unions shall be committed, and the manufacturers and the unions obligate themselves to maintain such standards to the best of their ability and to the full extent of their power.

Sixteenth. The parties hereby establish a Board of Arbitration to consist of three members, composed of one nominee of the manufacturers, one nominee of the

unions, and one representative of the public, the latter to be named by Meyer London, Esq., and Julius Henry Cohen, Esq., and, in the event of their inability to agree, by Louis Marshall, Esq.

To such board shall be submitted any differences hereafter arising between the parties hereto, or between any of the members of the manufacturers and any of the members of the unions, and the decision of such Board of Arbitration shall be accepted as final and conclusive between the parties to such controversy.

Seventeenth. In the event of any dispute arising between the manufacturers and the unions, or between any members of the manufacturers and any members of the unions, the parties to this Protocol agree that there shall be no strike or lockout concerning such matters in controversy until full opportunity shall have been given for the submission of such matters to said Board of Arbitration, and in the event of a determination of said controversies by said Board of Arbitration, only in the event of a failure to accede to the determination of said board.

Eighteenth. The parties hereby establish a Committee on Grievances, consisting of four members composed as follows: Two to be named by the manufacturers and two by the unions. To said committee shall be submitted all minor grievances arising in connection with the business relations between the manufacturers and their employees.

Nineteenth. In the event of any vacancy in the aforesaid boards or in the aforesaid committee, by reason of death, resignation, or disability of any of the members thereof, such vacancy in respect to any appointee by the manufacturers and unions, respectively, shall be filled by the body originally designating the person with respect

to whom such vacancy shall occur. In the event that such vacancy shall occur among the representatives of the public on such boards, such vacancy shall be filled by the remaining members representing the public in the case of the Board of Sanitary Control, and in the case of the Board of Arbitration both parties shall agree on a third arbitrator, and in case of their inability to agree, said arbitrator shall be selected by the governor of the State of New York.

APPENDIX B

RULES AND PLAN OF PROCEDURE

Adopted by the Board of Grievances

Established under the Protocol of Peace between the Cloak, Suit and Skirt Manufacturers' Protective Association and the various Local Unions represented by the Joint Board.

For brevity, the Manufacturers' Association is herein referred to as the "Manufacturers," the Local Unions and Joint Board are referred to as the "Unions," and where both parties are meant they are referred to as the "Parties."

THE BOARD OF GRIEVANCES

I. Immediately upon the adoption of these rules and plan of procedure, the members of the Grievance Committee, appointed pursuant to the Protocol of Peace, shall constitute themselves into a Board, and shall thereafter be known as "The Board of Grievances."

Hereafter in these rules it will be referred to as the "Board."

II. The Board shall immediately elect two chairmen, one from each side, who shall preside alternately, for two weeks.

TERM OF OFFICE

III. These officers shall hold office for one year, or until their successors are elected.

OFFICE OF CLERKS

IV. The clerks shall hold office for one year or until their successors are elected. Each clerk shall appoint as many deputy clerks as shall be required for the expeditious transaction of the business of the Board.

Upon the written request of any members of the Board of Grievances a committee of two, consisting of members of the Board or clerks or deputy clerks, one representing each side, shall visit any shop for the purpose of ascertaining whether the provisions of the Protocol are being observed, and report on the conditions of such shop to the Board.

V. A chairman shall preside at all meetings.

QUORUM

VI. The Board shall consist of five members from each side. Three members from each party (the Manufacturers and the Union) shall constitute a quorum of the Board.

REGULAR MEETINGS

VII. The Board shall meet regularly at designated and appointed times and places once a week. Meetings may be postponed by mutual consent and records of such postponement shall be recorded on the minutes.

SPECIAL MEETINGS

VIII. Special meetings of the Board shall be called only in cases of emergency, or where prompt or immediate action is necessary, and may be called by the chairman of either side.

CALENDAR

IX. The Board shall have a regular calendar at each regular meeting. The clerks shall prepare a calendar of cases to be disposed of, and such cases shall be disposed of in regular order, unless special rules be made by the Board.

ORDER OF TRIAL

X. Cases shall be placed upon the calendar in the order in which they are received, *i. e.*, in the order of the date of the filing of the complaints.

TRIALS AND HEARINGS

XI. No case shall be taken up by the Board until a complaint is filed in writing. As soon as a complaint is filed the clerks or their deputies shall make every effort to adjust the controversies. If the clerks agree their decision shall be binding on both parties, but either party has the right to appeal to the Board if dissatisfied with the decision of the clerks. If the clerks fail to agree on a verdict, the complaint, together with the report of the clerks, setting forth their findings as to the facts, shall be presented at the next meeting of the Board. If the reports of the clerks agree, the Board shall then dispose of the matter. If issues are raised by the two reports, the

case shall be placed upon the calendar for trial, and the issues shall be the issues thus raised by the reports of the clerks. At the time of trial both sides shall be heard and both parties shall offer their proofs, and the Board shall receive and consider them. The Board shall refer disputed questions of fact to any sub-committee of the Board, equally constituted from both parties, who shall report their decisions in writing to the Board. If both parties agree the decision shall be final; but in case any question of principle is involved in the decision, the party deeming itself aggrieved may take an appeal to the Board of Grievances, which appeal shall be heard by the Board of Grievances, as any other matter presented to them.

DECISIONS

XII. A majority vote shall be necessary to a decision. Both sides shall have an equal number of votes. In the event of a failure to arrive at such decision, the issues undecided shall be immediately framed and presented to the Board of Arbitration, as hereinafter provided.

ORDERS AND ENTRIES OF DECISIONS

XIII. All decisions of the Board shall be reduced to writing and orders thereon shall be entered by the clerks.

The filing of an order with the clerks shall constitute notice to each party.

DUPLICATE RECORDS

XIV. All records of the Board shall be kept in duplicate by the clerks, one to be filed with the Manufacturers and one to be filed with the Unions.

SANITARY MATTERS

XV. The Board will not consider any grievances relating to sanitary conditions. These should be addressed to the Board of Sanitary Control.

WRONGFUL DISCHARGE OF EMPLOYEE OR DISCRIMINATION

XVI. If the grievance arises because of the wrongful discharge of an employee, or because of discrimination on the part of the employer, the finding of the Board in favor of the employee shall entitle him to back pay, in full, during the period of his non-employment, pending hearing and determination of the grievance.

SHOP STRIKE, LOCKOUT OR GENERAL REFUSAL TO WORK

XVII. If a grievance arises because of the general stoppage of work of a shop or department of a shop, either by direction of the employer or because of or by the concurrent action of the employees, upon complaint received, the clerks, or their deputies, shall immediately proceed to the shop or department where the trouble occurs. If the employer is responsible for the stoppage, he shall, upon the demand of the clerks, or their deputies, immediately recall all his employees, pending the adjustment by the Board of any grievance he may have, and he shall thereupon frame and present his grievance; if the employees are responsible for the stoppage, notice shall be immediately given to them to return to work pending adjustment of the grievance by the Board and the chairman of the Price Committee shall immediately direct them to return to work.

VIOLATION OF PARAGRAPH XVII OF THE PEACE PRO- TOCOL

XVIII. A violation of the provision of Section XVII of these rules or of Section XVII of the Protocol, by either employer or employee, shall constitute a grievance to be presented to the Board of Grievances. If, after hearing, the Board finds the defendant guilty, the order of the Board shall be made the basis of prompt discipline in the Association or the Unions as the case may be. Such discipline shall consist of a suitable fine or expulsion. The action so taken shall forthwith be reported in writing to the Board of Grievances.

All names of candidates for membership in the Association shall be submitted by the latter to the Unions before the admission of such candidates, in order to afford such Unions an opportunity to acquaint the Association with the records of such candidates in respect to the conditions of their factories and their treatment of employees.

POSTING OF THESE NOTICES

XIX. Copies of the three preceding paragraphs and of Section XVII of the Protocol in English, and translations thereof in Italian and Yiddish, shall be posted in every shop of the Manufacturers, and in all of the meeting rooms of the Unions, immediately upon the adoption of this plan.

MATTERS FOR THE BOARD OF ARBITRATION

XX. Matters for the Board of Arbitration. (a) If the Board of Grievances shall find after the hearing of any case before it, that it cannot arrive at a decision in accordance with the rules herein provided, it shall imme-

diately request the Board of Arbitration to convene and hear the case. Wherever practicable it shall reduce the issue to an agreed statement of facts, or prepare and submit for decision specified questions. So far as practicable it shall relieve the Board of Arbitration of the necessity of taking testimony upon the disputed questions of fact.

GENERAL ABUSES OR GRIEVANCES

(b) If the Board of Grievances shall find any general grievances or abuse, which either party has failed, after due opportunity, to correct, or if either party fails adequately to discipline members found guilty by the Board of Grievances, such matters may be presented by the party aggrieved to the Board of Arbitration for redress, either through its counsel or through its officers, and the hearings thereon shall be public.

CONFERENCE OF BOTH PARTIES CALLED BY THE BOARD OF GRIEVANCES

XXI. Whenever, in the opinion of the Board of Grievances, a general situation arises requiring adjustment by both organizations, or revision or amendment of the Protocol, it shall call a conference of both organizations by duly authorized representatives to consider and discuss such matters. If such conference fails to agree, the situation shall be presented to the Board of Arbitration for adjustment, pursuant to the terms of the Protocol.

VIOLATION OF THESE RULES

XXII. Failure to observe any of the provisions of this plan and rules shall constitute a grievance to be tried before the Board.

COMPLAINT TO THE BOARD OF ARBITRATION

XXIII. Failure to respond in due course to any notice given by the clerks shall constitute a grievance to be tried before this Board. Repeated violations shall be the basis of complaint to the Board of Arbitration.

FAILURE TO COMPLY WITH ORDERS OF THIS BOARD

XXIV. Failure to comply with any decision or order of the Board shall constitute a grievance against the party to be presented to the Board of Arbitration.

NEGLECT OF DUTY ON THE PART OF MEMBERS OF THE BOARD

XXV. Neglect of duty on the part of any member on the Board shall be a grievance to be presented to the Board of Arbitration.

DISQUALIFICATION OF MEMBERS

XXVI. No member of the Board interested in a case shall sit in review thereof.

FAILURE TO ATTEND MEETING OR REFUSAL TO VOTE

XXVII. Any member of the Board failing to attend a meeting of the Board or refusing to vote in a case heard by him, shall furnish such explanation, or in case it shall be deemed inadequate by either party, the matter may be presented to the Board of Arbitration by the aggrieved party, either through its counsel or through its officers.

APPEALS

XXVIII. Either party deeming itself aggrieved may appeal to the Board of Arbitration from any order or decision made by the Board of Grievances, upon giving notice thereof to the clerks within thirty days after the service of a copy of such order or decision.

ORDER OF BUSINESS

XXIX. Until further revised, the order of business of the Board shall be as follows:

1. Report of clerks on adjusted matters.
2. New complaints.
3. Old complaints adjourned for answer.
4. Trials of issue presented.
5. Matters for the Board of Arbitration.
6. Matters for Conferences.

I, Morris Hillquit, Secretary of the Board of Arbitration of the Cloak, Suit and Skirt Manufacturers' Protective Association and Cloakmakers' Union, hereby certify that the foregoing is a true and complete copy of the rules and plan of procedure of the Board of Grievances under the Protocol of September 2d, 1910, as amended and settled by the said Board of Arbitration.

Dated, New York, March 11th, 1911.

MORRIS HILLQUIT,
Secretary.

APPENDIX C

DECISION OF BOARD OF ARBITRATION

January 21, 1915

CHAIRMAN BRANDEIS: Gentlemen, the Board has given consideration to the very able and informing arguments which have been presented, and is now ready to give its opinion.

There were presented to the Board in this proceeding three questions of fundamental importance. The first, relating to the respective rights of employers and employees in regard to the distribution of work.

The second, relating to the respective rights of employers and employees in regard to the discharge of individual employees.

The third, relating to the respective rights of employer and employees in relation to the discharge and employment of help in the case of what is called reorganization in the shops.

These questions were submitted to us as questions on the one side and the other of alleged existing rights under the Protocol. We are consequently called upon to decide, judicially, existing rights, and not to legislate, we having no power to legislate concerning these matters under the present circumstances.

As we are to pass upon what these rights are under the Protocol, it seems necessary that we should consider the situation prior to the formation of the Protocol, the circumstances which led up to the signing of the Protocol,

what it was expected to accomplish, and what it appears to have accomplished, all of course as bearing upon what the rights are on the various subjects as to which we are requested to render a decision.

Now, what the situation was which led to the formation of the Protocol appears in the request or statement presented of the grievances of the Union. The statement was presented in July, 1910, prior to or at the time of entering upon the conferences which ultimately led to the formation of the Protocol. These grievances, as stated by the Union, are as follows:

"Our main grievances are low wages, unreasonable night work, work in tenement houses, the disregarding of Sundays and holidays, sub-contracting, discrimination against Union men, the irregular payment of wages, the exacting of security, the charging for material and electricity, and the blacklisting of active Union men.

"To remedy these grievances, it is in our opinion necessary to establish a living standard of wages, to regulate the hours of labor, to limit night work, to prevent work on holidays, to abolish all charges for electricity and appliances, to do away with tenement house work, to prevent discrimination, to provide for the regular payment of wages in cash both by manufacturers and outside contractors, to do away with inside sub-contracting, to establish a permanent Board of Arbitration which is to settle grievances, the Unions and the employers to be equally represented on the Board of Arbitration, the appointment of shop committees and shop delegates.

"We are ready to enter into a discussion with you of these grievances, and if a satisfactory adjustment of them is reached, are prepared to recommend a settlement of the strike. In the event of such settlement, every

employee who participated in the strike to be reinstated, the terms of any settlement which may be reached to be reduced to writing and to be signed by both parties through their representatives."

The strike there referred to was a strike which involved about fifty thousand workers in this trade, and upwards of 1,500 employers. Before the agitation which led to the strike, only a small part of those fifty thousand workers were members of the Union. It was stated at the time that there were probably not more than three thousand members in good and regular standing before the agitation which led to the strike began.

About July 24, 1910, the conference began which resulted in the signing of the Protocol on September 2, 1910. That Protocol had four definite purposes. In the first place, the Protocol undertook to remove specifically the grievances enumerated. That is, the parties met to decide by agreement upon the specific things that should be done with reference to each of these grounds of complaint: and each matter agreed upon became a specific provision of the Protocol.

The result of that was to raise the industry as a whole, practically each and every part of it, to the standard which it is said was already observed by those shops in the industry which were most advanced. Its effect was to create the uniformly high standing provided by the Protocol—which theretofore had been reached only in individual instances.

The second result which was sought by the Protocol was to create, through the strengthening of the Employers' Association on the one hand, and of the Union on the other, bodies which should be able to enforce compliance with the terms of the agreement which was made. It was recognized that without a strong Union of em-

employees on the one side, and a strong Employers' Association on the other, the agreement could not attain the desired results.

Therefore, each party bound itself to aid the other in strengthening the organization of that other, to the end that what both had in mind and both purposed, the improvement of the conditions in the industry, might be effectually carried out.

In the third place, it was proposed, in creating the Protocol, to insure to the individual employee not only the compliance with the specific provision named in the Protocol, which involved changes in a large part of the shops, but to secure to the individual employee, through the Protocol, the enforcement of fair, reasonable and just treatment by his employer; such treatment which, independently of the Protocol, could ordinarily have been enforced only through strikes. That is, the Protocol was devised to enforce for the benefit of the employee a right to fair and just treatment; or, to put it in another way, to secure, through the instrumentality of the Protocol, the reasonable certainty that the employer would not exercise his legal rights oppressively or unfairly.

In the fourth place, it was the purpose of the Protocol to introduce into the relations of the employer and the employee a whole new element; that is, the element of industrial democracy; that there should be a beginning, at least, of a joint control, and with joint control a joint responsibility for the conduct of this industry: that we should pass from that condition where the employer determined alone what was to be deemed proper, and where the employer alone was held responsible for things that were improper in the trade; and that in place thereof we should impose upon all those in the trade, the employer as well as the employee, the obligation of removing

through constructive work, those conditions which properly caused discontent, and which prevented the employer and employee alike from attaining that satisfactory living within the industry which it must be the aim of all effort in business to secure.

It therefore was an essential part of this Protocol that it should look forward to improvement; and that the condition arrived at, although it was very much higher than that which had prevailed before the Protocol was adopted, was merely a stage in that development of the trade which the parties believed to be possible, that the higher steps were to be attained through coöperation, through a removal of that sense of antagonism of interests which had prevailed, and must necessarily prevail under other conditions, and which was believed to be an important cause of the discontent and of the unsatisfactory results hitherto prevailing.

Those who entered into the Protocol, therefore, looked forward to advances and, as has been said in one of the earlier opinions of this Board, a constant improvement in the condition of the worker was a part of the standard to which we were bound to look forward. It was recognized at that time, that the attainment of the end sought required not only the coöperation between this particular Union and this particular Employers' Association, but involved also the ability on the part of the Union to raise the standards in other shops in this city and in other places which would naturally be in competition with those members of the Protective Association; and the effort of the Union was pledged to secure, so far as possible, that improvement of standard elsewhere.

Now, those, as we conceive it, were the purposes sought to be accomplished. It was not intended by the Protocol to change the relation of the employer to the employee,

otherwise than as I have stated and as is expressly stated in the Protocol. In all other respects the legal rights were to remain what they had been before.

The Union, by signing the Protocol, relinquished its right to secure by strike more than it was getting, and there was substituted for that relinquished power of strike, the powers created under this agreement, which constitutes a government to control the relations between employer and employee. And as this Union and other Unions had frequently exercised their right to enforce the fair, just and reasonable exercise by the employer of his legal rights in regard to the administration of business, and in regard to hiring and discharging, so this instrument involved in its creation the right to secure, through its provisions, the same thing. But it substituted for the strike the machinery of the Protocol as a means of securing the fair and reasonable exercise by the employer of those rights which were, by law, vested in him.

We are of the opinion, therefore, that underlying the Protocol, and of the essence of its existence, must be a spirit of fairness, that it must be understood as a basis for any proper interpretation of it and application of it; that the parties desire by its provisions to promote, foster and develop square dealings in all of the relations of employer and employee; that its purpose must be read in the light of an honest attempt to eliminate unconscionable and unjust conditions in this important and necessary relationship; that unreasonable acts or demands are not to be expected from either of the parties, and that anything of that nature would be in violation of the fundamental purpose of the Protocol; that in the light of these basic principles, the Board decides, as bearing upon the questions of discharge:

That no employee who can be considered as a regular employee, should be discharged unfairly or without reasonable grounds. In other words, that the spirit of fairness and the rule of reason be used to determine whether or not an employee should be discharged;

That the right of determining this must in the first instance rest with the employer, and that any employee, deeming himself unjustly treated, has a right to make his complaint and have his grievance heard in the regular manner. And in the hearing of such cases, it is understood that the parties administering the Protocol are to look into all the facts and to apply the same standards for determining the case, thus eliminating the burden of proof from all consideration.

That statement, and what bears upon the other branches, may perhaps be amplified by this further statement:

The power of administration, discipline and discharge vested in the employer shall be exercised in a fair and reasonable manner, and if the propriety of the action is questioned, shall be subject to review.

The words "fair" and "reasonable," as used herein, shall be interpreted in the light of the spirit and of the purpose of the Protocol as stated, and that spirit and purpose includes, among other things, the following:

First: To assist the employer in the peaceful and uninterrupted operation of his factory, in establishing and maintaining reasonable discipline, and in promoting such economy and efficiency of production as may be secured by coöperative effort.

Second: To assist the Union in establishing the strength and efficiency of its organization, and raise the standard throughout the trade, to the end that the Union power may be adequate to carry the responsibilities and perform

the duties imposed upon it by the Protocol, and to promote the coöperation and good will between the Union and the Association, so essential to the successful operation of the Protocol, and to the solution of the problems of the industry.

Third: Subject to the foregoing provisions, to assist the individual worker in obtaining such security and continuity in his employment, such equity in the distribution of work and such fairness of general treatment and of conditions as may be possible and practicable, having regard to the unavoidable fluctuations and exigencies of the work, and the imperfections and limitations of ordinary human nature by which this enormously difficult industry must be administered.

And as bearing upon the question of what is "fair and reasonable," in the division of the work, the following may be of assistance as a guide:

The equal division of work is to be regarded as desirable and necessary in this industry, for it must be acknowledged that it should be made possible for the people called into the industry, and who are regularly employed therein, to earn a reasonable livelihood, but the principle of the equal division of the work is inseparably bound up with the principle of control of labor supply. The industry may be able to sustain the burden of supporting fifty thousand workers while the burden of supporting seventy-five thousand might break down the industry.

This makes it indispensable that the question of the control of labor supply must be considered in any permanent treatment of this question.

We recommend, therefore, that this question shall be taken up for consideration and disposition by a joint committee.

You will see, therefore, that in reference to what is a

regular employee and in undertaking to indicate what would be a fair and reasonable application of the commonly practiced rule of equitably distributing work, that we have not undertaken to lay down a definite rule or to express in a specific code what is fair and what is reasonable. For we believe that any attempt to define what is fair and reasonable with reference to discharge or in the administration of the shop, would, in the long run, lead rather to injustices than to justice. What is fair and reasonable, all things and all interests considered, is something which, in the absence of specific agreement between the parties, must be left to the judgment of men familiar with the particular facts, and the facts will vary in particular cases.

We are confronted with a situation which is similar to that with which courts and juries have constantly to deal—the question of what is reasonable care, with the question of what is reasonable notice, and with the question of what is reasonable cause for action. Any attempt to codify what is reasonable would have to make provision and take into consideration so many possible conditions and such remote possibilities that the mind of man could not justly determine in advance the rule to be applied. Indeed, the rules, if determined in advance, would prove so numerous that the mere selection of the rule to be applied would present a difficulty almost insurmountable.

It is perfectly possible, however, that in respect to certain of the questions bearing upon this subject, the parties may come together, and reach an agreement, which will in the first instance relieve the employers and employees, and then the clerks or the Committee on Immediate Action, from the necessity of passing upon certain classes of individual cases. The parties could do

this by laying down some rule which should in certain well-defined classes of cases be accepted as the reasonable and fair course of action.

And this suggestion as to what parties may be able to do in simplifying by agreement the determination of the rule to be followed, applies perhaps even more strongly to the questions which have been presented to us in connection with the reorganization of shops. On that subject we feel ourselves unable as stated to lay down any rule except that the action shall be what is fair and reasonable. But it is perfectly possible that if you gentlemen will come together in conference to consider certain well-defined classes of cases, you may be able to deal with them comprehensively, and to that extent narrow the field in which the discretion of the employer, of the clerk and of the Committee on Immediate Action would otherwise have to be exercised.

We feel, however, that there are other matters even more far-reaching, and of deeper significance, upon which it is essential that the parties should get together: the particular questions in connection with the distribution of work, discharge and the reorganization of shops, which have brought you here before us. Underlying these matters are some fundamental difficulties in the trade, for which neither the one side nor the other can be held wholly responsible, and for which both sides must, in our opinion, be held responsible, not in the sense of being culpable for their existence, but in the sense of having the responsibility of removing by careful, persistent thinking and experimentation, the causes of the trouble. These causes cannot possibly be removed by shifting burdens from one side to the other. The difficulties and incidental suffering are inherent in the trade. And of these difficulties the three of greatest importance are:

First: the matter of standardizing prices.

We feel that on the questions of discharge and reorganization, particularly, this subject of a standardization of prices has the most definite and indeed controlling bearing. At present collective bargaining exists in the trade only nominally. There was collective bargaining in fixing upon the week rates when this Protocol was confirmed; but there is not in any proper sense collective bargaining in dealing with the subject of piece rates, and the wages of at least three-fourths of the employees rest upon piece rates.

It has been stated here that there ought not to be competition within the Union, but we have here in a sense 1,500 or 2,000 different competing units; for the piece prices are made independently in each shop. Some way must be found of standardizing prices. It does not seem to us to be at all beyond the realm of human achievement in this industry to solve that problem. But the members of the Union on the one hand, and of the Manufacturers on the other, should accept the burden involved in solving this problem and devote themselves persistently to working out some standard. It is perfectly clear that in working out some general standard, they will not be able to solve, in many instances, an individual case as satisfactorily as one of the two thousand manufacturers might satisfy it for himself. But the parties can secure, and they must secure, some approach to reasonable uniformity in the fixing of piece prices acceptable as a working basis.

The second matter has important relation not only to questions of discharge and reorganization, but also to the regularization of employment, the question of distribution of work. The Board realizes the difficulties inherent in that problem as this is a seasonable industry: and we

are convinced, that it is inevitably bound up with the question of control of the labor supply. It involves the question of apprenticeship in this industry. This industry cannot be made either what the employers or the employees have the right to insist that it should become, unless some way is found, through invention, experimentation and broad processes of education, of mitigating in large measure the present barbaric conditions which prevail in this industry. The irregularity of employment not only involves terrible waste for employer and employee, and ultimately for the community also, but also brings about unhappiness and demoralization on the part of all affected by it.

Third, and as bearing upon the possible solution of these questions, and also the necessary relation of these Protocol shops with those who are outside the Protocol, whether in this city or any other cities, the Board recommends the careful consideration by the parties of the Protocol label.

The achievements of the past four years and a half in which those engaged in this industry have been endeavoring to work out their problems, and in a certain sense the problems of all industries, justify them in calling upon the public to aid in making possible the solution of the problems involved. We are dealing specifically with the problems of only a part of the garment trade; but your problems are in large measure the problems of all industry. You are leaders in the attempt to work out these problems, and are entitled not only to the sympathetic consideration, but to the help of the rest of the community. Protocol conditions are conditions which the community desires to have established generally. There are scarcely any, whether employers or employees or consumers, who do not wish to accomplish

exactly what those who are in this industry are seeking to accomplish by way of bettering the relations of employer and employees. Some method ought to be devised of enlisting the coöperation of the community in the great and difficult task of working out these problems. The Protocol label has been suggested as one of the means of accomplishing such coöperation. However valuable the suggestion, it is obvious that its practical application is a matter of great but not of insuperable difficulty.

We believe that that fourth purpose, stated at the outset of the Protocol, of the careful working together by the two parties of the problems of this industry, as being joint problems of employer and employee, is the key to the ultimate solution of most difficulties. New questions will constantly arise, partly because of the changes which come in the trade from time to time, and more largely, it is hoped, because of the growing demand which should properly be made for an improvement in the condition of the worker. But those problems can never be adequately solved; the relief can never be given to any appreciable extent by the shifting of the burdens either from the employers to the employees, or from the employees to the employers. We may all look forward to the time—as was suggested in one of the papers read here—when labor will employ capital, instead of capital employing labor; but whether labor employs capital or capital employs labor, we must meet the fundamental problem of adequate production—of such an increase of productivity and diminution of waste as shall make the total product sufficient to reasonably satisfy the desires as well as needs of those actually engaged in the industry. In the opinion of the Board, it is necessary that the parties should be constantly directing their attention to the improvement

of fundamental conditions. We realize that in this industry, with all of its difficulties, and with the very large number of persons engaged in it as the employers and employees, there will inevitably be many persons who consider themselves aggrieved, and many who are actually aggrieved. We believe that every case in which an employer or employee considers himself aggrieved, should receive careful and adequate consideration; because that is an essential part of the Protocol, indeed the life of the Protocol. Nevertheless that it ought to be possible now to devise methods and means so as to release the energies and the time of those who are best able to give attention to the larger problems of the industry. The individual grievances should be investigated and adjusted mainly through the efforts of the clerks or the Committee on Immediate Action. The time of the other officers in high stations among both employers and employees should be reserved for the consideration of the fundamental difficulties referred to, and the solution of which seems to us to be absolutely necessary to the satisfactory adjustment of the mutual relations, and a satisfactory result to all concerned.

There are a few words that perhaps could be added to what I have said, on the one hand by Mr. Thompson, and on the other by Mr. Holt.

MR. THOMPSON: It perhaps might properly be said at this time, in regard to the third proposition which was submitted to the Board for adjudication—I am referring to that one relating to the equal distribution of work, as far as possible—that in the consideration of that question, the Board feels that it has adequately answered it by the laying down of the principles which have been read to you by Mr. Brandeis. I might refer to a portion of the language which must necessarily be taken alone,

which will help in elucidating what I am referring to. That is to say, the Protocol is for the purpose of assisting the individual workers in obtaining such security and continuity of employment and such equity in the distribution of work, and such fairness of general treatment and conditions as may be possible and practicable. The Board feels that the laying down of those general principles will furnish an adequate guide for the carrying out of the Protocol, and that it is not necessary at this time to go into the laying down of rules or the settlement of definite matters which might properly be left to the parties themselves. We feel that this will give an adequate guide to the employer, to the clerks, to the Committee on Immediate Action, and if it should be that any question should still exist, of course an appeal from the Committee on Immediate Action to this Board would permit the Board to pass on the proposition.

CHAIRMAN BRANDEIS: I ought to add simply this, which the Board had requested me before to say that if, after the parties have come together in their conferences to consider any of these questions in which the Board can in any way aid the parties, it stands ready to meet again at as early a date as is practicable for that purpose.

Mr. Holt says that he has nothing to add to what has been stated by Mr. Thompson and myself.

MR. HILLQUIT: Mr. Chairman, Mr. Thompson and Mr. Holt—In behalf of the Union, which was the moving party in this proceeding, I wish once more to thank the Board, and all its members, for the time, attention and consideration given to our requests laid before them, and also for the opinion rendered to-day. We accept the opinion, gentlemen, in the spirit in which it was rendered. We have submitted to you certain specific requests for interpretation, certain specific requests for rules of con-

duct. You have not given us definite, concrete directions, but we feel that you have done more. You have given us a guide, a guide of general conduct in our relations to each other, based upon the highest principles of fairness and justice. We could not expect more, we did not expect more, and we promise you, gentlemen of the Board, that we shall make honest efforts to make this guide the standard of our relations, the test of our relations with the employers. And I wish to say here, perhaps to some extent for the information of you gentlemen of the Board, that our position when we come before you is necessarily somewhat unfortunate, and may perhaps tend to give you an erroneous impression of the actual relations existing between us, and the actual situation of the industry. We come before you with our difficulties. We come before you after some clash or another which is bound to arise, but I am happy to say we do not come very often before you. But it is natural. We have no occasion to apply to you for intervention and guidance and assistance when everything is harmonious between us. Our industry is, as the Chairman of your Board well remarked, one beset with extreme difficulties, the usual difficulties of every industry in these times, difficulties created by fierce competition among the employers, and other conditions, conditions of labor generally, and economic conditions. We have yet the special and peculiar difficulties of a highly seasonal industry, and perhaps other difficulties inherent in our industry alone, and based, to a large extent also, upon the character both of the employers and the employees.

And I want you to remember, gentlemen, that these relations that arise or spring from this situation are such as may be classified and generalized and brought before you, or laid before the public as an abstract proposition,

but that in actual life they find expression in the daily relations of about two thousand employers with about fifty thousand employees, of both sexes, and all ages; and both the employers and the employees are vitally interested in every question that arises in their relations. All of these workers have to look for their living to the industry, and the conduct of the industry, and the employers likewise. Thus we have thrown against each other in daily contact the interests of more than fifty thousand human beings, the vital interests of such a large army of men and women, both employers and employees. And with that we have managed, in the course of more than four years, to not only maintain the relations between us, in the spirit in which we attempted to express it in our Protocol, but to improve those relations on the whole. It is a most eloquent testimony of how well those who have given us this Protocol have performed their work. I say, on behalf of the organization I have the honor to represent, that it shall be our effort to continue this work, the work of improving the conditions of the industry and protecting the men and women in the industry, from day to day, under the Protocol. I know it is a difficult task. We all realize it. We know we cannot create ideal conditions satisfactory to both parties within a very short time, but I am free to say that some of the recommendations mentioned by the Chairman we have had under consideration. In some of them, as my friend Mr. Cohen has stated to the Board, we have made a beginning at least of what we hope will be a perfectly feasible and workable plan. Others, as far as we are concerned, we shall take up as speedily as possible and give them our earnest consideration. In our future dealings with each other, the opinion of this Board rendered here to-day will very often have to be referred to. I hope that

no effort will be made on the part of either of the two parties to ossify this beautiful living principle enunciated by the Chairman; that no effort will be made to codify, as the Chairman has expressed it, those general principles, but that both sides, and particularly the men charged with the machinery for the adjustment of all grievances, large or small—and they are bound to come up from day to day—will bear the spirit of this decision in mind, rather than try to analyze the exact expressions. As far as we are concerned, we are not only willing but absolutely determined to live up to that spirit, and I hope it will not become necessary for either side to convene another session of this Board, with the request for supplemental legislation or rules. We hope, with the general rules of guidance given to us, we shall be able to settle our few, and, after all, insignificant controversies, from time to time, and to continue our period of constructive work for the benefit of the industry and both of the parties concerned in it.

Once more I thank you, gentlemen of the Board, in behalf of the Unions.

MR. JULIUS HENRY COHEN: I must share with my colleague the expressions of gratitude for the great service that the Board has given. I suppose that it will be inevitable, in the reading of your opinion, as in the hearing of it, that each side will put emphasis upon those portions which it regards of interest to it. But so far as the expressions from my colleague with reference to the desire to heed the injunction of the Board, to do constructive thinking, planning and invention, I need only say that my friend—and may I say that I need no such injunction. From the moment that my colleague entered into the consideration of this question, I have found him ready to consider every proposition for the improvement

of the industry and to consider it frankly and constructively and to share in the carrying of the burden. And in his expressions to-day he has merely continued the spirit that began with his entrance into this situation.

I am very glad indeed that the Board has impressed both sides with the importance of spending more time upon the root problems of this industry than the spending of time upon the smaller litigations. As you have observed from my presentation, we are of the opinion that there is much waste of time in unnecessary litigation. The time of the Executive officers should be released for the consideration of the big problems of the industry. We feel it is a burden to ask men who have to carry the responsibilities of factory and office life here, with the tremendous ordinary wear and tear, and the extraordinary wear and tear of abnormal situations, and then ask them to give service to an industry in the sense in which we lawyers give service to our profession. We are fortunately situated, we lawyers. Our time is arranged so that we can give service to our profession, and yet perform our usual vocations, but business men have difficulty in doing that, especially those men whose livelihood is dependent on the business. Our friends are more fortunately situated, not merely that their duties are less arduous or less exacting but that this is their only duty to consider these propositions from an industrial point of view, and, as I say, we are very glad to have you bring home the importance of separating the time spent upon small matters and devoting it to large matters.

We would have been glad, as my friend would have been glad, to have had more definite and specific rulings from the Board. As an expression of the spirit that should animate the attitude of both parties, neither of us can take exception to what you have said. And might

I say on behalf of my clients, that so far as the Association and its officers are concerned, that is the spirit that we have sought to carry out in the last four and a half years, and we rest upon our record of performance in that regard. We do not claim that all of our members are perfect. If they were perfect, there would be no need for the machinery or the institution we have created, but we accept that general obligation, and we have sought by the most rigorous means to carry it out in the conduct of our members. We are very glad to think your Board has seen the importance of those provisions, if not expressed, implied in the Protocol, for equalizing the standards throughout the industry, for whatever our dreams may be in the future form of industrial society, we are living to-day in a condition of industrial society where neither these institutions nor these factories can subsist without some recognition of the competitive problem, and certainly no Protocol can exist, no association can exist, if the practical operation of the Protocol is to penalize the member of the Association and to offer a reward to the non-member. We are very glad to see that you have referred to the importance of considering that matter, and in presenting again the matter of the Protocol label, you have merely carried out the inventive thoughts of some of the men who have been with the problem for these four and a half years.

May I, with the same respect I hope always to show, bring to the attention of the Board the fact it has not passed upon one matter that may be of consequence in the future handling of these matters. You will recall my friend made the contention that unless there was specific reservation of the rights of the parties, the handling of cases by the clerks would establish by acquiescence certain propositions of Protocol law. Upon that

matter we have taken our stand, and he has taken his. I don't see how I can very well agree with him. I don't see how he can very well agree with me, and the Board has not aided us in that regard.

MR. HILLQUIT: Just to clarify the situation before the Chair answers that: Mr. Cohen has obviously misunderstood my contention. It never was my contention that any service rendered or course followed without specific reservation creates a precedent. I never based my contention upon the theory of legal precedent in the technical sense. The only time the question of precedence was at all discussed by me was in connection with the practice of equal distribution of work, which I claim was so uniform, and so clearly acquiesced in by both sides as to definitely establish a custom which has not existed before. I do not claim now and I did not claim at any time that any act done by either side, by the Association or by the Union, perhaps contrary to its definite and concrete rights, would constitute a waiver of such rights in the future.

CHAIRMAN BRANDEIS: The explanation which Mr. Hillquit has given perhaps relieves the Board of the necessity of adding anything, but we do wish to say this: We have at all times urged upon the representatives of both manufacturers and the Union, to consider, in the first place, not so much rights as duties, and to bear in mind that this is a human institution; and that in order to make it work satisfactorily to both parties, it is essential that they should seek adjustments and to refrain from raising issues unnecessarily and from insisting upon positions as legal rights. We therefore feel that what the clerks were doing in adjusting these problems coming up from day to day, should clearly not constitute precedents, except so far as they might be precedents

for their own action through growing wisdom and judgment in dealing with the necessarily difficult problems which arise. But in no sense should these good offices which we were constantly urging upon the clerks be construed as creating rights. Indeed, we have on several occasions complimented the clerks on their great success in effecting these adjustments. It seems to us clear that the course hitherto pursued by the clerks of effecting adjustments should be continued unhampered.

APPENDIX D

FINDINGS AND RECOMMENDATIONS OF
COUNCIL OF CONCILIATION

Appointed by the Mayor of the City of New York to conciliate matters in controversy between the Cloak, Suit and Skirt Manufacturers' Protective Association, and the International Ladies' Garment Workers' Union and the Joint Board of the Cloak and Skirt Makers' Unions.

JULY 23, 1915

The Council appointed by the Mayor of the City of New York to assist the Cloak, Suit and Skirt Manufacturers' Protective Association and the International Ladies' Garment Workers' Union to reach an agreement on the matters at present in controversy between them, record on behalf of the general public, their appreciation of the peaceful and progressive relations which have existed in the cloak-making industry during the past five years, a state of things due not only to the enlightened self-interest of the employers and wage earners, but also to the large social ideals which have animated both sides. If this fair prospect has for the moment been clouded, and these friendly relations have suffered a temporary interruption, it is the aim and the hope of this Council to pave the way for their resumption, not only to prevent ground previously gained from being lost, but to bring about advances in new directions.

The Council remind both sides of the very notable achievement already to their credit in the creation of the covenant known as the "Protocol." And if this instrument has been found defective in certain particulars it should be modified, reconstructed or some more suitable agreement put in its place. In the endeavor to work out the plan of a new compact of this sort, the Council has laid down the following fundamental rule:

That the principle of industrial efficiency and that of respect for the essential human rights of the workers should always be applied jointly, priority being assigned to neither. Industrial efficiency may not be sacrificed to the interests of the workers, for how can it be to their interest to destroy the business on which they depend for a living, nor may efficiency be declared paramount to the human rights of the workers; for how in the long run can the industrial efficiency of a country be maintained if the human values of its workers are diminished or destroyed. The delicate adjustment required to reconcile the two principles named must be made. Peace and progress depend upon complete loyalty in the effort to reconcile them.

We, therefore, find:—

I.—Under the present competitive system, the principle of industrial efficiency requires that the employer shall be free and unhampered in the performance of the administrative functions which belong to him, and this must be taken to include:

(a) That he is entirely free to select his employees at his discretion.

(b) That he is free to discharge the incompetent, the insubordinate, the inefficient, those unsuited to the shop or those unfaithful to their obligations.

(c) That he is free in good faith to reorganize his shop

whenever in his judgment, the conditions of business should make it necessary for him to do so.

(d) That he is free to assign work requiring a superior or special kind of skill to those employees who possess the requisite skill.

(e) That while it is the dictate of common sense, as well as common humanity, in the slack season to distribute work as far as possible equally among wage earners of the same level and character of skill, this practice cannot be held to imply the right to a permanent tenure of employment, either in a given shop or even in the industry as a whole. A clear distinction must be drawn between an ideal aim and a present right.

The constant fluctuations—the alternate expansions and contractions to which the cloak-making industry is so peculiarly subject, and its highly competitive character, enforce this distinction. But an ideal aim is not, therefore, to be stigmatized as Utopian, nor does it exclude substantial approximations to it in the near future. Such approximations are within the scope of achievement, by means of earnest efforts to regularize employment and by such increase of wages as will secure an average adequate for the maintenance of a decent standard of living throughout the year. The attempt, however, to impose the ideal of a permanent tenure of employment upon the cloak-making industry in its present transitional stage is impracticable, calculated to produce needless irritation and injurious to all concerned.

II.—In accordance with the rule above laid down, that the principle of efficiency and that of respect for the human rights of the workers must be held jointly and inseparably, *we lay down:*

(a) That the workers have an inalienable right to

associate and organize themselves for the purpose of maintaining the highest feasible standard as to wages, hours and conditions, and of still further raising the standards already reached.

(b) That no employee shall be discharged or discriminated against on the ground that he is participating directly or indirectly in union activities.

(c) That the employees shall be duly safeguarded against oppressive exercise by the employer of his functions in connection with discharge and in all other dealings with the workers. It is to be carefully noted that the phrase "oppressive exercise of functions" need not imply a reflection on the character and intentions of the high-minded employer.

An action may be oppressive in fact, even though inspired by the most benevolent purpose. This has been amply demonstrated by experience. No human being is wise enough to be able to trust his sole judgment in decisions that affect the welfare of others; he needs to be protected, and if he is truly wise, will welcome protection against the errors to which he is liable in common with his kind, as well as against the inspirations of passion or selfishness.

For this reason, a tribunal of some kind is necessary, in case either of the parties to this covenant believes itself to be unjustly aggrieved. And because the construction of such a tribunal is a delicate and difficult task, demanding the greatest care, lest on the one hand the movements of industry be clogged by excessive litigation, and lest on the other hand the door of redress be closed against even the most real and justified complaint; therefore

III.—In accordance with these general principles, the Council propose that an agreement be entered into by the Cloak, Suit and Skirt Manufacturers' Protective

Association, and the International Ladies' Garment Workers' Union and the Joint Board of Cloak and Skirt Makers' Unions, embodying these principles and providing the following:

(a) Every complaint from either organization to the other shall be in writing, and shall specify the facts which, in the opinion of the complaining organization, constitute the alleged grievance, and warrant its presentation by one organization to the other. Such complaints shall be investigated in the first instance by the representatives of the two associations, chosen for the purpose, it being impressed upon them that they use and exhaust every legitimate effort to bring about an adjustment in an informal manner. In case, however, an adjustment by them be not reached, the matters in dispute shall be referred for final decision to a

(b) Trial Board of three, consisting of one employer, one worker and one impartial person, the latter to be selected by both organizations, to serve at joint expense and to be a standing member in all cases brought before the Board. The remaining two members shall be selected as follows:

The Association and the Union shall each make up a list of ten persons, to be approved by the other. From these two lists, as each case arises, each party shall select one person.

IV.—The articles of the Protocol numbered First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, Eleventh, Twelfth, Thirteenth, Fourteenth and Fifteenth are hereby incorporated in this agreement except as herein expressly revised and except as hereafter modified after the recommendations of the Council.

V.—This Council has been requested by the Mayor

to continue as a commission to investigate thoroughly the fundamental problems of regularization, standards of wages and enforcement of standards throughout the industry, of trade education, and of a more thorough organization of the industry, and on the basis of such investigation it shall submit a constructive policy to both organizations.

VI.—*Wages.*

1. As a temporary arrangement until a maturer study of the industry shall lead to a final adjustment, the standard observed for piece workers in fixing piece-work rates shall be at the rate of 70 cents an hour for each hour of continuous work for operators and piece tailors, and 50 cents an hour for each hour of continuous work for finishers, taking the worker of average skill as the basis of computation and making no allowance for idleness.

Piece prices shall be settled between the employer and a price committee. If the parties cannot agree, they shall call in price adjusters furnished by both sides.

Wages for week workers shall be as follows:

For cutters.	\$27.50
For skirt cutters.	23.50
For jacket upper pressers.	25.00
Skirt upper pressers.	23.00
Skirt under pressers.	18.00
Jacket under pressers.	21.00
Sample tailors.	23.00
Skirt basters.	15.00
Part pressers.	15.50
Canvas cutters.	13.00

Skirt finishers \$11.00, provided each department be permitted to have one learner to six finishers.

Reefer pressers and under pressers to be paid as other

pressers providing the Unions prove their contention that such wages have been paid outside of the Association houses.

Piece prices for buttonhole makers: Class A, \$1.30 per hundred buttonholes; Class B, 90 cents per hundred.

VII. *For Determination by Arbitration.*

That the following questions shall be submitted to the arbitration of this Council, their decision to be rendered within thirty days, and to be accepted as final and binding.

(a) Whether the pressers and piece workers shall during eight weeks in each season be permitted to work overtime on Saturdays until four o'clock.

(b) What legal holidays shall be observed in the Cloak, Suit and Skirt Industry, and under what conditions they shall be observed.

VIII.—It is distinctly understood that there shall be no shop strike nor general strike, nor individual nor general lockout during the term of this agreement.

IX.—The Union and the Association, with the assistance of the Council, will, as soon as practicable, create a Joint Board of Supervision and Enforcement of Standards throughout the industry.

X.—Since the Council will continue in existence for study and constructive recommendations, it will be available whenever the parties desire to consult with it, and if either organization feels aggrieved against the other, such organization may address the Council upon the subject, and the Council will do the best it can to assist.

Finally, since peace in industry, as in families and among states, is the offspring of good will, and since no peace can be sound or enduring that is not based on this indispensable prerequisite, it is agreed that the leaders

on both sides shall exert their utmost endeavors to create a spirit of mutual good will among the members of their respective organizations, such good will taking the specific form of a disposition to recognize the inherent difficulties which each side has to meet—a spirit of large patience under strain, and, withal, a belief in the better elements which exist in human nature, be it among employers or wage earners, and the faith that an appeal to these elements will always produce beneficent results.

These recommendations, when accepted by both parties, shall constitute the agreement between them.

This agreement to enter into force on the date hereof and to continue for the period of two (2) years, and thereafter for like periods of two (2) years, unless terminated by either party on two months' notice.

Any modification of the terms of the agreement, requested by either party, shall be presented to the other at least two (2) months before the termination of any period.

FELIX ADLER (*Chairman*),
CHARLES L. BERNHEIMER,
LOUIS D. BRANDEIS,
HENRY BRUERE,
GEORGE W. KIRCHWEY,
WALTER C. NOYES,
Council on Conciliation.

July 23, 1915.

APPENDIX E

INDUSTRIAL AGREEMENTS

(INTRODUCED 1912 BY J. RAMSEY MACDONALD)

A BILL

TO

Make Agreements come to voluntarily between Employers and Workmen in the Port of London legally enforceable on the whole Trade.

Be it Enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1. Whenever and so long as an agreement between employers and workmen in or about the Port of London concerning wages, hours, or other conditions of labour is registered by the Board of Trade under the provisions of this Act, the terms of such an agreement shall be implied terms of every contract for the employment of a workman in the Port of London, and any agreement applying thereto concerning wages, hours, or other conditions of labour, in so far as it is in contravention of this provision, shall be void.

2. (1) Any representative body of employers and workmen in the Port of London who have made an agreement regarding any of the matters referred to in

the first section of this Act may apply to the Board of Trade to have such an agreement registered under this Act.

(2) The application must be accompanied by copies of the agreement, particulars of the representative character of the persons who have made the agreement, with such other information as the Board of Trade may reasonably require.

(3) The Board of Trade, on being satisfied that such an agreement has been come to by persons representative of employers and workmen in the trade, shall register such agreement, but in no case shall the Board of Trade refuse to register if the persons making application to be registered either—

(a) Represent one-third of the employers and workmen directly affected by the agreement; or

(b) Are persons who deal with at least one-half of the total volume of the trade;

provided that if the representatives of the employers and the workmen are appointed by unions, or federations, or other combinations, any employer or firm of employers, and any workman engaged in the trade or section of the trade subject to the agreement, is at liberty to join the union, federation, or combination on reasonable conditions.

(4) Any body of persons who have registered an agreement under this Act shall be entitled to have their agreement removed from the register on sending to the Board of Trade a written application to that effect, and the Board of Trade, on being satisfied that the persons who made the agreement are no longer representative persons, may themselves remove the agreement from the register.

3. In this Act the expression "Port of London" has the like meaning as it has in the Port of London Act,

1908. The expression "workman" means a workman who works wholly or in part within the area of the Port of London. The expression "employer" means any person or body of persons who employs workmen either wholly or in part within the area of the Port of London.

4. This Act may be cited as the Industrial Agreements Act, 1912.

APPENDIX F

SKELETON OUTLINE OF PROVISIONS OF A BILL

I. Create a "*National Industrial Board*" with powers analogous to those of the English Industrial Council under the English "Trade Disputes Act."

II. Equal representation to organized labor, organized employers, and the public, appointed by the President for long terms.

III. Adequate salary paid to the Chairman (to be a man of the type of Sir George Askwith).

IV. In addition to the powers included in the English "Trade Disputes Act," give power to

(a) Consider and investigate all matters concerning sanitation and safety.

(b) To revise trade agreements upon the appeal of the parties.

(c) To hear appeals from Boards of Conciliation or Arbitration established under trade agreements.

(d) To gather statistics upon all matters involving wage increase.

V. All trade agreements to be validated by registration with the "National Industrial Board."

VI. Whenever it shall appear that the agreement covers a substantial portion of the industry, the parties to the agreement may apply for its *extension* to the entire industry. Upon proper hearings, to those not yet affected, the Industrial Board may make an order *extending* the agreement to cover the entire industry.

VII. Trade agreements to be authorized which may

provide for the preferential employment of members of the trades union party to the agreement, and for *Wage Scale Boards, Boards of Conciliation and Arbitration, Grievance Boards, Boards of Sanitary Control, Boards of Apprentices, etc., etc.*

VIII. The National Industrial Board, before registering any trade agreement, to make careful investigation of the surrounding facts, and if it finds that the agreement is made in good faith, and is for the best interests of the working people and the employers in the industry, *it may certify to the fact, and its certificate shall raise an irrebuttable presumption in any court of law or equity that such agreement was in fact entered into in good faith, and not in restraint of trade.*

IX. Where agreements create methods of arbitration by Boards of Arbitration, Conciliation, Grievances, or the like, the decision in writing of such Board may be filed in the office of the clerk of any federal court, and a motion may be made to confirm the report on notice to the party against whom the decision has been rendered, and when such decision shall be confirmed, a copy of the decree may be entered in the clerk's office.

X. An appeal may be taken from any award by a Board of Arbitration to the National Industrial Board.

XI. Where any agreement voluntarily entered into provides methods of arbitration or conciliation, it shall be lawful for either party to terminate the same, upon three months' notice, but if not terminated, it shall not be lawful for either party to engage in any strike, walk-out, or lockout before the controversy is submitted to such tribunal.

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